

**COMMENTS OF ATTORNEYS GENERAL OF THE STATES OF CALIFORNIA,
OREGON, COLORADO, NEW MEXICO, VERMONT, AND WASHINGTON**

U.S. Department of the Interior
Bureau of Land Management
1849 C St. NW, Room 5646
Washington, DC 20240

Submitted via Federal eRulemaking Portal at Regulations.gov

November 10, 2025

**Re: Proposed Rescission of Conservation and Landscape Health Rule, RIN 1004-AF03,
Order #02412-014-004-047181.0**

The Attorneys General of the States of California, Oregon, Colorado, New Mexico, Vermont, and Washington (collectively, States) respectfully submit these comments in opposition to the Department of the Interior (DOI) Bureau of Land Management (BLM)'s proposed rule rescinding its Conservation and Landscape Health Rule (Proposed Rescission).¹ The Conservation and Landscape Health Rule (Public Lands Rule or Rule) was adopted on May 9, 2024, with an effective date of June 10, 2024.² Just over a year after adopting the Public Lands Rule, BLM now proposes to rescind it. The Proposed Rescission is misguided, unlawful, and would adversely impact the management of important public lands. BLM should withdraw the Proposed Rescission and instead continue to implement the Public Lands Rule so that public lands will be properly stewarded to best serve our nation's interests.

In the Public Lands Rule, BLM promulgated regulations pursuant to the Federal Land and Policy Management Act of 1976 (FLPMA), 43 U.S.C. § 1701 *et seq.*, confirming that conservation is a use equivalent to other uses of public lands under FLPMA's "multiple use and sustained yield" framework.³ As stated by BLM, "[t]he rule clarifies that conservation is a use on par with other uses of public lands under FLPMA's multiple use framework."⁴ The Public Lands Rule also authorizes BLM to lease land for conservation, restoration, and mitigation purposes.⁵

¹ 90 Fed. Reg. 43,990 (September 11, 2025). The Proposed Rule is titled "Rescission of Conservation and Landscape Health Rule" RIN 1004-AF03.

² 89 Fed. Reg. 40,308 (May 9, 2024). The Rule is codified in amendments to 43 C.F.R. §1600 and newly created 43 C.F.R. § 6100.

³ 89 Fed. Reg. 40,308.

⁴ *Id.* at 40,320.

⁵ *Id.* at 40,321.

The Rule prioritizes designation of “areas of critical environmental concern” (ACECs)⁶ and provides for greater stakeholder engagement and Tribal consultation on management decisions in those areas, in addition to directing BLM to seek opportunities for Tribal co-stewardship of lands.⁷

By creating formal leasing frameworks (Conservation Leasing) for conservation, restoration, and mitigation, the Public Lands Rule gives BLM the flexibility to ensure it can manage public lands to satisfy FLPMA’s multiple use and sustained yield directive for generations. Given declining land health, fragmentation of—and development demands on—federal public lands,⁸ the Rule also allows BLM to mitigate for overuse impacts, unavoidable impacts from projects on BLM-managed lands, and climate change. The Rule is well-justified and strongly supported by FLPMA.

After a multi-year rulemaking resulting in the Public Lands Rule, BLM now abruptly reverses course and proposes to rescind the Rule in its entirety. BLM’s justification for the Proposed Rescission is that the Public Lands Rule is unlawful because conservation is not a valid management use under FLPMA’s “multiple use” and “sustained yield” mandate.⁹ BLM wrongly asserts that the Rule is “not supported by clear statutory authority” on the unsound bases that conservation is not authorized by the multiple use mandate and the Rule’s Conservation Leasing exceeds the scope of BLM’s leasing authority.¹⁰ Not only is this interpretation legally flawed, but it stands in stark contrast to BLM’s longstanding actions in practice and policy and represents an attempt to write conservation entirely out of FLPMA. This rationale contravenes the plain text, legislative history, and judicial interpretation of FLPMA, in addition to past agency policy implementing the Act.

Because BLM manages 245 million acres of land or approximately one-tenth of the United States’ land base, its management policies significantly impact the States—most possess significant acreage of BLM-managed lands within State boundaries. The States support the Public Lands Rule because it provides balanced federal land management which preserves ecosystem health while allowing for other uses of BLM land. The Rule’s provisions related to Conservation Leasing allow the States to mitigate for the effects of environmental degradation, including effects exacerbated by climate change.¹¹ The States also have a quasi-sovereign

⁶ *Id.* at 40,325.

⁷ *Id.* at 40,312.

⁸ 89 Fed. Reg. 40,309.

⁹ 90 Fed. Reg. 43,991 (Sep. 11, 2025).

¹⁰ *See id.*

¹¹ *Alfred L. Snapp & Son, Inc. v. Puerto Rico ex rel. Baez*, 458 U.S. 592, 607 (1982); *Maryland v. Louisiana*, 451 U.S. 725, 737–38 (1981).

interest in preventing harm to the health of our natural resources and ecosystems¹² and are entitled to “special solicitude” in seeking redress for environmental harms within our borders.¹³ States have a proprietary interest in the economic benefits of the Rule, including sustained outdoor recreation and nature-based tourism economies. Finally, the States have an interest in BLM’s consultation with State agencies that have jurisdiction or special expertise related to the federal leasing and land use planning process. The Proposed Rescission would jettison the Conservation Leasing that the States have a vested interest in preserving.

These comments demonstrate that the Proposed Rescission: (1) adversely impacts the unique interests of the States; (2) is arbitrary and capricious in violation of the Administrative Procedure Act (APA), 5 U.S.C. §§ 551-559; and (3) is unlawful in violation of FLPMA, 43 U.S.C. § 1701 *et seq.*, National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321-4347 and the Endangered Species Act (ESA), 16 U.S.C. §1531-1544. A repeal of the Public Lands Rule on the bases set forth in the Proposed Rescission promote an agency interpretation of FLPMA that contravenes statutory text, Congressional intent, legislative history, judicial interpretation, and agency policy. For the reasons stated below, the States strongly oppose the Proposed Rescission and request that it be withdrawn in its entirety.

¹² *Massachusetts v. E.P.A.*, 549 U.S. 497, 519–22 (2007).

¹³ *Id.* at 520.

TABLE OF CONTENTS

I.	BACKGROUND	5
A.	The Public Lands Rule.....	7
B.	Rescission of the Public Lands Rule.....	8
II.	BLM LAND WITHIN OUR STATES.....	9
III.	THE PROPOSED RESCISSION WILL ADVERSELY IMPACT STATES’ INTEREST IN BALANCED MANAGEMENT OF BLM LAND.	15
A.	Rescission of the Public Lands Rule would impede States’ ability to safeguard the environment and public health and harm States’ economic interests.....	15
B.	Rescission of the Public Lands Rule could diminish States’ meaningful coordination with BLM on land use and management decisions within our States.....	27
VI.	THE PROPOSED RESCISSION IS CONTRARY TO LAW IN VIOLATION OF FLPMA AND THE ADMINISTRATIVE PROCEDURE ACT.....	28
A.	Plain Text of FLPMA.....	29
B.	Legislative History	31
C.	Agency Policy	33
VII.	THE PROPOSED RESCISSION IS ARBITRARY AND CAPRICIOUS IN VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT.....	34
A.	BLM’s explanations for the Proposed Rescission run counter to the science and evidence before the agency.	34
B.	BLM fails to provide a reasoned explanation for its decision to repeal the public lands rule and its explanations are contrary to law.....	38
C.	BLM fails to provide a reasoned explanation for its changes in violation of the APA.	39
D.	BLM fails to consider reliance interests on the continued existence of the rule in violation of the APA.	39
VIII.	BLM’S ACTION IS CONTRARY TO LAW AND VIOLATES THE NATIONAL ENVIRONMENTAL POLICY ACT 42	
IX.	BLM MUST COMPLY WITH SECTION 7 OF THE ENDANGERED SPECIES ACT.....	45
	CONCLUSION	47

I. BACKGROUND

FLPMA declares the policy of the United States that “public lands be managed in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values; that, where appropriate, will preserve and protect certain public lands in their natural condition; that will provide food and habitat for fish and wildlife and domestic animals; and that will provide for outdoor recreation and human occupancy and use.”¹⁴

BLM is responsible for implementing FLPMA, and FLPMA “authorizes the Secretary to promulgate implementing regulations necessary to ‘carry out the purposes’ of the Act.”¹⁵ While BLM predated FLPMA’s passage, FLPMA is considered to be BLM’s modern “organic act,” given the extensive legislative direction the Act provides to BLM.¹⁶

Congress enacted FLPMA to address the deterioration of federal rangelands.¹⁷ Before FLPMA, several 19th and early-20th century laws opened federal public lands for leasing by private citizens for livestock grazing, mining, and oil and gas development—but while these laws provided for the administration of leases, they generally lacked a statutory mandate on how to manage land.¹⁸

In 1970, the Congressionally established Public Land Law Review Commission published a report recommending reforms to remedy a patchwork of inconsistencies in federal public lands laws.¹⁹ In 1976, Congress passed FLPMA with the intent that it fix the “conflicting, sometimes truly contradictory. . . and inadequate” laws governing public land use and management.²⁰ FLPMA’s passage ushered in a new era of federal public lands management—

¹⁴ See 43 U.S.C. § 1701(a)(8).

¹⁵ 89 Fed. Reg. 40,313, citing 43 U.S.C. § 1740.

¹⁶ See Eleanor R. Schwartz, *A Capsule Examination of the Legislative History of the Federal Land Policy and Management Act of 1976, Public Law 94-579—October 21, 1976*, Appendix A, 83, https://www.blm.gov/sites/blm.gov/files/AboutUs_LawsandRegs_FLPMA.pdf. (last visited Oct. 23, 2025).

¹⁷ See *Pub. Lands Council v. Babbitt*, 167 F.3d 1287, 1299 (10th Cir. 1999) (“FLPMA. . . represents Congress’ recognition that previously enacted laws governing use of the federal lands had failed to provide adequately for their protection and enhancement.”).

¹⁸ See, e.g., General Mining Act of 1872; Mineral Leasing Act of 1920; Taylor Grazing Act of 1934.

¹⁹ *One third of the Nation’s land; a report to the President and to the Congress* (1970), available at <https://archive.org/details/onethirdofnation3431unit/mode/2up> (last visited Oct. 31, 2025).

²⁰ Senate Hearing (Jan 30, 1975), *Legislative history of the Federal land policy and management act of 1976 (Public Law 94-579)*, 53, available at <https://ia801409.us.archive.org/28/items/legislativehisto00unse/legislativehisto00unse.pdf>. (last visited Oct. 31, 2025).

one of “retention” rather than “disposal” of lands to private ownership.²¹ In FLPMA, Congress acknowledged the many uses of federal public lands and issued a foundational directive for balanced management in the multiple use and sustained yield mandate.

Indeed, since the agency’s inception, BLM has acknowledged that conservation is within its management purview. *See* Section VI.C. BLM has consistently managed public lands for conservation since FLPMA’s enactment in 1976. In the Public Lands Rule, BLM acknowledged that “FLPMA has always encompassed conservation as a land use” and that “BLM has been practicing conservation of public lands throughout the agency’s history.”²² BLM explained in the Rule that conservation means the “management of natural resources to promote protection and restoration.”²³ In turn, “protection” means the “act or process of conservation by maintaining the existence of resources”—and allows for active management rather than simply preservation,²⁴ in contrast to “restoration” which means “assisting in the recovery of an ecosystem.”²⁵

Recently, BLM has begun to actively disavow its longstanding practice of managing its lands for purposes that include conservation in an apparent effort to rewrite its mandate under FLPMA. The Proposed Rescission follows Presidential Executive Order (EO) 14154, titled “Unleashing American Energy,” which expressly encourages fossil fuel development on federal public lands.²⁶ Similarly, on August 1, 2025, DOI issued Secretarial Order (SO) 3438, “Managing Federal Energy Resources and Protecting the Environment” which requires DOI to “optimize the use of lands under its direct management” by facilitating approval of projects that provide the greatest energy output per acre.²⁷ SO 3438 demands that DOI “only permit those energy projects that are the most appropriate land use when compared to a reasonable range of project alternatives” and suggests that solar and wind projects may never be consistent with law.²⁸ These actions by the federal government in conjunction with the Proposed Rescission significantly steer BLM away from balanced land management and towards a singular focus on energy-generating uses on public land, particularly those associated with fossil fuel extraction. In this context, BLM’s Proposed Rescission has significant consequences for the States.

²¹ *See* 43 U.S.C. §1701(a)(1) (“Congress declares that. . . the public lands be retained in Federal ownership. . .”).

²² 89 Fed. Reg. 40,310.

²³ *Id.* at 40,340.

²⁴ *Id.*

²⁵ *Id.* at 40,341.

²⁶ *See* E.O. 14154, January 20, 2025. The Proposed Rescission also cites Executive Order 14192, titled “Unleashing Prosperity Through Deregulation.”

²⁷ *See* Secretarial Order 3438 (Aug. 1, 2025).

²⁸ *Id.*

A. THE PUBLIC LANDS RULE

BLM published the proposed Public Lands Rule on April 3, 2023, initially providing a 75-day comment period.²⁹ After receiving requests for an extension, BLM extended the comment period by 15 days. BLM held two virtual public meetings and three in-person meetings and engaged in Tribal consultation.³⁰ Ultimately, BLM provided a 90-day public comment period and received more than 150,000 public comments.³¹ BLM published the final rule on May 9, 2024.³² Approximately 92 percent of comments supported adoption of the Public Lands Rule and the effort to strengthen its conservation measures.³³

In order to manage its public lands for multiple uses, BLM determined that the resilience of ecosystems across those lands is a paramount concern.³⁴ In the Rule, BLM determined that degradation and poor ecosystem health hinder the ability of public lands to continue to provide resources.³⁵ To support this effort, BLM explicitly recognized conservation as a valid use of BLM lands equivalent with other FLPMA “uses” and as a key tool for accomplishing FLPMA’s sustained yield mandate.³⁶ The Rule established three ways to build and maintain the resilience of ecosystems on public lands: “(1) protecting the most intact, functioning landscapes; (2) restoring degraded habitat and ecosystems; and (3) using science and data as the foundation for management decisions across all plans and programs.”³⁷ The Rule also established new leasing frameworks for restoration and climate change mitigation,³⁸ new standards for the nomination and designation of ACECs,³⁹ and stakeholder engagement mechanisms (including Tribal consultation).⁴⁰

²⁹ 89 Fed. Reg. 40,315.

³⁰ *Id.*

³¹ 88 Fed. Reg. 19,593 (April 3, 2023).

³² *See* 89 Fed. Reg. 40,308 (May 9, 2024).

³³ *See Analysis: Public comments overwhelmingly support BLM Public Lands Rule*, CTR. FOR WESTERN PRIORITIES, (Jul. 5, 2023) <https://westernpriorities.org/2023/07/analysis-public-comments-overwhelmingly-support-blm-public-lands-rule/> (primary source data is embedded in this article).

³⁴ 89 Fed. Reg. 40,308.

³⁵ *Id.* at 40,309.

³⁶ *Id.* at 40,308-09.

³⁷ *Id.* at 40,308.

³⁸ *id.* at 40,310.

³⁹ *id.* at 40,312.

⁴⁰ *Id.*

In the Public Lands Rule, BLM sought to promote ecosystem health, “ecosystem resilience” and “landscape intactness” by authorizing Conservation Leasing to restore degraded landscapes or mitigate impacts from other authorized uses.⁴¹ BLM stated that the purpose of Conservation Leasing is to allow an area to recover during the lease term and to become available for other uses after the termination of the lease. BLM also noted that the Rule attempted to provide “clear, consistent and informed direction shaped by public input” for conservation—long considered a valid land use—to be implemented.⁴² BLM emphasized that the “rule does not prioritize conservation above other multiple uses.”⁴³ The Rule also explicitly sought out public, states, local and Tribal opinions and established the importance of public input on the management of federal lands.^{44, 45}

B. RESCISSION OF THE PUBLIC LANDS RULE

On September 11, 2025, BLM published the Proposed Rescission, which if finalized, will rescind the Public Lands Rule. The justification provided for the Proposed Rescission is that the Public Lands Rule is “unnecessary and violates existing statutory requirements.”⁴⁶ In contrast to BLM’s express affirmation in its 2024 rulemaking that the Rule does not prioritize, much less precludes, other uses of BLM lands,⁴⁷ BLM now concludes that the Rule’s Conservation Leasing precludes “productive uses” such as grazing, timber harvesting, mining, and mineral leasing.⁴⁸ Additionally, BLM claims that the Public Lands Rule’s economic impacts were underestimated,⁴⁹ and that the Rule’s Conservation Leasing and expansion of the ACEC framework vest excessive discretion in individual BLM officers to preclude uses incompatible

⁴¹ 89 Fed. Reg. 40,310 & 40,321.

⁴² *Id.* at 40,310.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ In June 2024, six states and a farming and ranching trade association filed four lawsuits in federal district courts challenging the Rule. The actions alleged that: (1) the Rule was not authorized by FLPMA, and (2) BLM improperly relied on a categorical exclusion for its NEPA compliance. The cases were transferred to the U.S. District Court for the District of Utah. Several environmental organizations intervened in defense of the Rule. These consolidated actions were stayed in February 2025. *See Utah v. Haaland*, No. 2:24-cv-00438 (C.D. Utah, June 18, 2024); *Alaska v. Haaland*, No. 3:24-cv-00161 (D. Alaska, July 24, 2024); *North Dakota v. U.S. Dep’t of the Interior*, No. 1:24-cv-00124 (D.N.D., June 21, 2024); *Am. Farm Bureau Fed’n v. U.S. Dep’t of the Interior*, No. 2:24-cv-00136 (D. Wyo., July 12, 2024).

⁴⁶ 90 Fed. Reg. 43,991.

⁴⁷ 89 Fed. Reg. 40,310.

⁴⁸ 90 Fed. Reg. 43,991.

⁴⁹ *Id.* at 43,992.

with conservation.⁵⁰ BLM also alleges that Conservation Leasing exceeds BLM’s leasing authority,⁵¹ and that the Rule illegally allows BLM to withdraw land from use without Congressional authorization.⁵² Finally, BLM claims the Proposed Rescission is categorically excluded from environmental review under NEPA because “environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis . . .”⁵³

II. BLM LAND WITHIN OUR STATES

Collectively, there are approximately 245 million acres of land managed by BLM in the United States. Over 52.9 million acres (21.6% of the total) of BLM lands can be found within the boundaries of the undersigned States. According to 2024 data, there are cumulatively 715 ACECs (61% of the total number) within our States. States have multifaceted interests in the way these lands are managed. The primary users of BLM lands are State residents, and these lands are home to wildlife, including species that are endangered or threatened, the preservation of which implicates States’ interests. In addition, federal actions taken on federal land naturally affect adjacent State lands and communities. BLM holdings are interspersed with States’ lands, creating a complex checkerboard where federal and States’ lands intersect.⁵⁴ Management decisions, ecological processes, and human activities taking place on BLM lands inevitably impact, and overflow into, adjacent State lands.

⁵⁰ *Id.* at 43,991.

⁵¹ *id.*

⁵² *Id.*

⁵³ *Id.* at 43,993 (citing 43 C.F.R. § 46.210(i)).

⁵⁴ *See* Fig. 1.

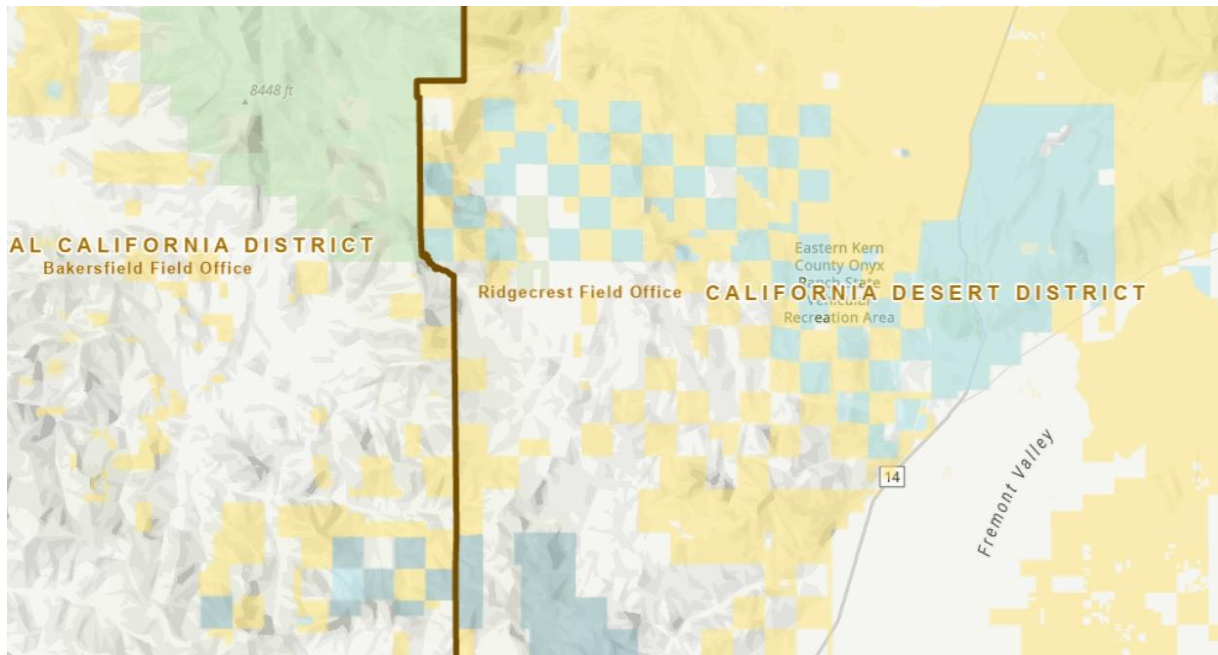


Fig. 1. This screenshot from a BLM map tool shows land ownership in a portion of Kern County, California. The yellow parts are BLM lands, and the light blue parts are State lands. This image is included to provide an example of the close connection between State and federal lands. Patterns like this occur throughout the Western United States. Source: <https://experience.arcgis.com/experience/9a89ee80c604431e8f8d939a186fbdbb> (last visited Oct. 22, 2025).

California

BLM is responsible for managing approximately 15 million acres of public land within the State of California, representing approximately 15% of the State's total land mass.⁵⁵ BLM land in California is the ancestral homeland of Indigenous peoples and Tribal nations and supports a wide variety of historic and cultural resources. These public lands span remarkably diverse ecosystems, including forest, desert, coastal, mountainous, and grassland environments throughout the State. BLM land in California also includes valuable and fragile resources in the California desert which are protected by FLPMA's provisions creating the California Desert Conservation Area.⁵⁶

⁵⁵ U.S. BUREAU OF LAND MGMT., *What We Manage in California*, <https://www.blm.gov/about/what-we-manage/california> (last visited Oct. 22, 2025).

⁵⁶ See 43 U.S.C. § 1781.

As of 2024, BLM had designated 233 ACECs in California, spanning 6,494,215 acres.⁵⁷ BLM maps provide additional information, including name and location, on ACECs in California.⁵⁸ For example:

- **North Amargosa ACEC** in Inyo County was designated to protect listed species, like the Amargosa vole.⁵⁹ The Amargosa River contains an outstanding suite of rare and imperiled species found nowhere else on earth.⁶⁰
- **Sacramento River Bend ACEC** in Tehama County spans 20,558 acres and contains vernal pools, resulting from millions of years of soil and mineral layer formation, which contain abundant plants that attract pollinator species critical to agricultural productivity. This ACEC also contains wetlands, which act as natural water purifiers that filter pollutants and improve the water quality of California's Sacramento River and its tributaries.⁶¹ This ACEC offers over 17 miles of public river access and trails for hiking, biking, fishing, and horseback riding.
- **Kaweah ACEC** in Tulare County protects a grove of ancient Giant Sequoia trees, which sequester carbon and help combat climate change. The iconic trees, plus the extensive trail system, are popular tourist attractions.

California relies on healthy and resilient BLM lands to provide clean air and water for communities, habitat for wildlife, and to support residents' livelihoods and ways of life.

⁵⁷ U.S. BUREAU OF LAND MGMT., *Public Land Statistics 2024*, Table 5-15, (June 2025) <https://www.blm.gov/sites/default/files/docs/2025-07/BLM-Public-Land-Statistics-2024.pdf> (hereinafter "Public Lands Statistics 2024")

⁵⁸ U.S. DEP'T OF INTERIOR, *BLM CA Areas of Critical Environmental Concern*, <https://gbp-blm-egis.hub.arcgis.com/datasets/BLM-EGIS::blm-ca-areas-of-critical-environmental-concern/explore?location=36.234193%2C-114.873975%2C5.19> (last visited Oct. 23, 2025).

⁵⁹ U.S. BUREAU OF LAND MGMT., *Areas of Critical Environmental Concern*, <https://www.blm.gov/programs/planning-and-nepa/planning-101/special-planning-designations/acec-s> (last visited Oct. 23, 2025).

⁶⁰ *Ecological Values of the Amargosa River in California*, THE NAT. CONSERVANCY, 26, (April 2018). <https://www.scienceforconservation.org/assets/downloads/Eco-Values-Amargosa-2018.pdf>.

⁶¹ U.S. BUREAU OF LAND MGMT., Northwest California Integrated Resource Management Plan Record of Decision and Approved Management Plan, 2-127, (Nov. 2024) https://eplanning.blm.gov/public_projects/2012803/200480044/20122967/251022947/NCIP_ROD_ARMP_508_Vol1_20241107.pdf; U.S. BUREAU OF LAND MGMT., Northwest California Integrated Resource Management Plan: Areas Of Critical Environmental Concern, 1, https://eplanning.blm.gov/public_projects/2012803/200480044/20059869/250066051/NCIP_Existing%20and%20Nominated%20ACECs.pdf (last visited Oct. 23, 2025).

Oregon

BLM is responsible for managing approximately 15.7 million acres of public land within the State of Oregon, representing approximately 25% of the State's total land mass.⁶² These lands are incredibly diverse. They include sagebrush prairies of eastern and central Oregon, forests and timberlands to the west, and rocky stretches of the Pacific coastline. The biodiversity is so unique it led to the creation of Cascade Siskiyou National Monument; the first National Monument that was created to protect unique biodiversity.⁶³ BLM manages Cascade Siskiyou National Monument in southern Oregon. BLM also manages roughly 34 designated wild and scenic rivers, including the Rogue, John Day, and Owyhee rivers.

The unique nature and biodiversity of BLM lands within Oregon is a significant draw for tourism. And these attributes contribute to a significant outdoor recreation industry within the State estimated to be worth roughly \$2.5 billion per year and 18,000 jobs.⁶⁴

Within the total land mass, BLM manages roughly 2.1 million acres of forested lands, commonly known as the Oregon and California Railroad Act lands (O&C lands).⁶⁵ Many of these O&C lands consist of a checkerboard pattern with alternating state and private lands interspersed with BLM lands. Management of BLM lands directly affects the surrounding lands in part due to their close proximity.

BLM also manages approximately 229 ACECs throughout Oregon and Washington totaling roughly 937,801 acres.⁶⁶

Colorado

In Colorado, BLM manages 8.3 million surface acres and 27.1 million subsurface areas.⁶⁷ These public lands generate tens of thousands of jobs and billions of dollars in revenue every year for local, state and national economies. Recreation uses generated \$1.5 billion in economic output and supported 11,300 jobs from BLM-managed lands across Colorado, and Colorado ranked third among the nation's BLM states for economic contributions in FY 23 for

⁶² *Public Land Statistics 2024*, *supra* note 57, at Table 1-3.

⁶³ See U.S. BUREAU OF LAND MGMT., *Cascade-Siskiyou National Monument*, <https://www.blm.gov/programs/national-conservation-lands/national-monuments/oregon-washington/cascade-siskiyou> (last visited November 5, 2025).

⁶⁴ U.S. BUREAU OF LAND MGMT., *Valuing America's Public Lands 2024*, https://www.blm.gov/sites/default/files/docs/2024-11/BLM-Valuing-Americas-Public-Lands-2024_508.pdf

⁶⁵ *Public Land Statistics 2024*, *supra* note 57, at Table 1-5.

⁶⁶ *Id.* at Table 5-15.

⁶⁷ *Id.* at Table 1-3.

recreation.⁶⁸ Among other resources, in Colorado, BLM manages three national conservation areas, 53 wilderness study areas, five wilderness areas and two national monuments so they may be preserved for their cultural, ecological, and scientific values.

New Mexico

BLM is the largest land manager in the State of New Mexico, administering over 13.5 million acres of land of immense value to the State. Notably, BLM-managed public lands in New Mexico are responsible for the vast majority of the total economic output of BLM lands nationally, largely due to oil and gas leasing in the State.⁶⁹ As of September 2024, BLM has designated 161 ACECs in New Mexico.⁷⁰ These ACECs amount to 1,077,313 acres of public lands. BLM maps provide additional information, including name and location, on 113 ACECs in New Mexico.⁷¹ New Mexico has the third highest number of ACECs in the country, trailing only behind California and Oregon/Washington.⁷²

New Mexico has a unique cultural heritage predating the founding of the U.S., and many cultural resources exist on lands managed by BLM. For example, Greater Chaco Area consists of 79 ACECs, parts of which are designated as a UNESCO World Heritage Site; Crow Canyon contains 7,000 acres with petroglyphs dating back to the 17th century;⁷³ and Caja del Rio contains petroglyphs dating back 8,000 years.⁷⁴ These landscape features are likely to receive greater protection in the future due to provisions in the Public Lands Rule, including provisions that clarify irreparable harm, establish a management standard, provide temporary management for potential ACECs in critical surrounding areas, and enhance input from stakeholders and Tribal Nations on management decisions. For New Mexico, then, the Proposed Rescission may result in harm to New Mexico's distinct cultural heritage, ecological diversity and economic progress.

⁶⁸ *Valuing America's Public Lands 2024*, *supra* note 64.

⁶⁹ *Id.*

⁷⁰ *Public Land Statistics 2024*, *supra* note 57, at Table 5-15.

⁷¹ U.S. BUREAU OF LAND MGMT., *BLM NM Areas of Critical Environmental Concern*, <https://gbp-blm-egis.hub.arcgis.com/datasets/BLM-EGIS::blm-nm-areas-of-critical-environmental-concern/explore?location=34.330410%2C-105.101446%2C6.94> (last visited Oct. 23, 2025).

⁷² *Public Land Statistics 2024*, *supra* note 57, at Table 5-15.

⁷³ Patrick Lohmann, *Advocacy Group Says These Wild Areas Face Most Threats Under Public Lands Rule Repeal*, THE TRI-CITY RECORD, (Sept. 16, 2025) <https://www.tricityrecordnm.com/articles/advocacy-group-says-these-wild-areas-face-most-threats-under-public-lands-rule-repeal/>

⁷⁴ *New Mexicans Show Strong Support for Bureau of Land Management's Proposed Public Lands Rule*, ACT NOW FOR PUB. LANDS (May 30, 2023), <https://actnowforpubliclands.org/latest-news/new-mexicans-show-strong-support-for-bureau-of-land-managements-proposed-public-lands-rule>.

Despite the high proportion of biodiversity and public lands in New Mexico, only 6.1% of all protected lands in the state are managed primarily for biodiversity, significantly under the national average of 12.6%.⁷⁵ In contrast, over a quarter of all undeveloped land, totaling nearly 20 million acres, is managed under multiuse status.⁷⁶ In this way, this rule has notable significance for New Mexico's biodiversity as much of this biodiversity is concentrated in a few key areas, such as riparian corridors and the Madrean Sky Islands.⁷⁷ Many imperiled species (i.e. species with declining populations at risk of extinction) exist outside areas protected primarily for biodiversity, subject to the limited protection of surrounding public lands.⁷⁸ Likewise, vast amounts of BLM-managed land are within close proximity to state parks⁷⁹ and some of the state's most precious BLM-managed lands have not yet achieved ACEC status or other protection, including the following: Otero Mesa, Carlsbad Chihuahuan Desert Rivers, Salt Playas, and Birds of Prey Grasslands.

Washington

BLM manages 437,315 acres of federal land in Washington State.⁸⁰ This includes the San Juan Islands National Monument—a unique collection of forested areas and islands spanning 1,000 acres in the Salish Sea off the coast of Washington.⁸¹ BLM lands in Washington also include the Juniper Dunes and twelve miles of scenic and historic trails.⁸² Oregon and Washington collectively have 229 ACECs, amounting to 937,801 acres.⁸³ In Washington, these ACECs includes the Juniper Forest ACEC of approximately 12,900 acres, the Yakima River

⁷⁵ Laura Hilberg, *New Mexico public lands and their significance to climate change adaptation and mitigation: Identifying priorities for conservation and stewardship* ECOADAPT, 4 (Dec. 2022), https://ecoadapt.org/data/resource-documents/EcoAdapt_2022_NM%20Public%20Lands%20Climate%20Adaptation%20&%20Mitigation%20Report_FINAL_v3.pdf.

⁷⁶ *Id.* at p. 6-7.

⁷⁷ *Id.* at p. 14-15.

⁷⁸ *Id.* at 15.

⁷⁹ *Protecting Vulnerable Public Lands Could Address U.S. Outdoor Recreation Needs*, CTR. FOR AM. PROGRESS (Sep. 30, 2023), <https://www.americanprogress.org/article/protecting-vulnerable-public-lands-could-address-u-s-outdoor-recreation-needs>.

⁸⁰ *Public Land Statistics 2024*, *supra* note 57, at Table 1-3.

⁸¹ U.S. BUREAU OF LAND MGMT., *San Juan Islands National Monument Fact Sheet*, https://www.blm.gov/sites/default/files/orwa_sanjuan_factsheet.pdf (last visited Nov. 5, 2025).

⁸² *Public Land Statistics 2024*, *supra* note 57, at 81, 211.

⁸³ *Id.* at Table 5-15.

Canyon ACEC totaling approximately 5,500 acres, the Cowiche Canyon ACEC of 600 acres, the Coal Creek ACEC of 700 acres, and Little Vulcan Mountain ACEC of 600 acres.⁸⁴

Washington has a long history of working with BLM to conserve habitat in Washington. For example, the Washington Shrubsteppe Restoration and Resiliency Initiative (WSRRI) is a joint project of the Washington Department of Fish and Wildlife, the Washington State Department of Natural Resources, and the Washington State Conservation Commission that works to restore the shrubsteppe landscape of Eastern Washington that has been lost or degraded.⁸⁵ These habitats support endangered and threatened species, including the greater sage-grouse, the Columbian sharp-tailed grouse, and the federally endangered Columbia Basin pygmy rabbit.⁸⁶ The WSRRI strategy includes working with BLM to secure financial resources to pursue this restoration work in Washington.⁸⁷ Restoration work on BLM shrub-steppe lands in Washington has included planting tens of thousands of plant plugs and seeds and removing fencing impairing habitat. The WSRRI has also worked with federal and state partners, including BLM, on an Arid Lands Initiative to identify and prioritize lands for conservation efforts, including BLM lands.⁸⁸

III. THE PROPOSED RESCISSION WILL ADVERSELY IMPACT STATES' INTEREST IN BALANCED MANAGEMENT OF BLM LAND.

A. Rescission of the Public Lands Rule would impede States' ability to safeguard the environment and public health and harm States' economic interests.

Environmental Interests. States have a unique interest in safeguarding their environments from harmful federal actions. The Public Lands Rule establishes frameworks for BLM to manage the multiple challenges facing public lands today, including addressing the effects of climate change and development pressures. A rescission of the Public Lands Rule would harm States' environmental interests.

Climate change jeopardizes the productivity and health of public lands. Public lands support a variety of diverse ecosystems, including forests, watersheds, deserts, and grasslands. These ecosystems have abundant biodiversity and support human health in the form of carbon

⁸⁴ BLM National Data, available at <https://experience.arcgis.com/experience/9a89ee80c604431e8f8d939a186fbdbb> (last visited Nov. 5, 2025).

⁸⁵ See WASH. DEP'T OF FISH & WILDLIFE, Washington Shrubsteppe Restoration and Resiliency Initiative, Long-Term Strategy 2024-2025 (Mar. 1, 2024), available at <https://wdfw.wa.gov/sites/default/files/publications/02489/wdfw02489.pdf>.

⁸⁶ *Id.* at i.

⁸⁷ *Id.* at 44, 51.

⁸⁸ *Id.* at 112; see ARID LANDS INITIATIVE, *The Science*, <https://aridlandsinitiative.org/our-projects/the-science/> (last visited Nov. 5, 2025).

sequestration and agriculture.⁸⁹ Attribution science links climate change to increased frequency and intensity of natural disaster and extreme weather. Public lands within the States are under stress from increasingly frequent and intense wildfires⁹⁰ and prolonged droughts.⁹¹ In 2021, 70% of BLM lands experienced severe or extreme drought.⁹² Historic drought in Colorado River basin states has created a dire water crisis. The period 2000-2021 in the Southwest had the driest soil moisture of any period of the same length in at least the past 1,200 years.⁹³ Wildfires, which are fueled by extreme heat and drought, are one of the deadliest and most costly climate-related events in the United States.⁹⁴ A 2025 study found that particulate pollution from wildfires caused approximately 15,000 premature deaths in the United States from 2006 to 2020, disproportionately impacting communities in the Western United States, where most of BLM's land is concentrated.⁹⁵ Another 2025 study concluded that deaths in the United States from wildfire smoke may increase to more than 70,000 annually by 2050 if climate change is not effectively addressed.⁹⁶ The authors' research suggests that the health impacts of climate-driven wildfire smoke could be among the most important and costly public health consequences of a warming climate in the United States.

Moreover, the degradation of public lands from the effects of climate change is intensified by the impacts of extractive uses. Untempered use of public lands threatens life-sustaining natural resources. A recent report analyzing data from 1997-2019 revealed that half of BLM lands assessed for land health failed to meet standards to achieve physical and biological composition and function.⁹⁷ Livestock overgrazing, oil and gas extraction, and off-road vehicle

⁸⁹ Allison R. Crimmins et al., *Fifth National Climate Assessment*, U.S. GLOB. CHANGE RSCH. PROGRAM, Ch. 1, 1-16-1-17, 1-46-1-47 (2023) <https://doi.org/10.7930/NCA5.2023>.

⁹⁰ Douglas I. Kelly et al., *State of Wildfires 2024-2025*, 17 EARTH SYST. SCI. DATA, 5377, 5380 (2025), <https://essd.copernicus.org/articles/17/5377/2025/essd-17-5377-2025.pdf>.

⁹¹ Crimmins, *supra* note 89, at 6-9.

⁹² U.S. BUREAU OF LAND MGMT., *A Critical Call to Restore our Public Lands*, 8, (Nov. 2024), available at https://www.blm.gov/sites/default/files/docs/2024-11/Restoration%20Blueprint%20508_0.pdf.

⁹³ Crimmins, *supra* note 89, at 2-19.

⁹⁴ U.S. SENATE, Joint Economic Committee Democrats, *Climate-exacerbated wildfires cost the U.S. between \$394 to \$893 billion each year in economic costs and damages* (Oct. 2023), available at https://www.jec.senate.gov/public/_cache/files/9220abde-7b60-4d05-ba0a-8cc20df44c7d/jec-report-on-total-costs-of-wildfires.pdf.

⁹⁵ Beverly E. Law et al., *Anthropogenic Climate Change Contributes to Wildfire Particulate Matter and Related Mortality in the United States*, 6 COMMS. EARTH & ENV'T, 1, 2 (2025) <https://doi.org/10.1038/s43247-025-02314-0>.

⁹⁶ Minghao Qiu et al., *Wildfire smoke exposure and mortality burden in the US under climate change*, NATURE (2025) <https://doi.org/10.1038/s41586-025-09611-w>.

⁹⁷ PEER, *BLM Land Health Status Report*, 7 (Nov. 2022), available at <https://peer.org/wp-content/uploads/2022/11/BLM-Land-Health-Data-Rpt-Nov-22.pdf>.

use amplify the effects of global warming by damaging vegetation.⁹⁸ Unmitigated livestock grazing creates greenhouse gas emissions,⁹⁹ decreases the sequestration and storage of carbon,¹⁰⁰ exacerbates the effects of wildfire,¹⁰¹ can result in loss of biodiversity on the range¹⁰² and the desertification of wetland and riparian areas.¹⁰³ Poor timber management, combined with climate change and invasive species stressors, reduces the Northwestern United States' boreal forests' capacity to sequester and store carbon, in addition to other ecosystem services.¹⁰⁴ These impacts reduce the productivity and carrying capacity of U.S. rangelands.¹⁰⁵

Degraded habitat and climate change pressures on wildlife have resulted in biodiversity loss, which can lead to ecosystem collapse and incursion of invasive species.¹⁰⁶ The spread of invasive plants exacerbates native species decline, leaving landscapes, and wildlife, less

⁹⁸ Crimmins, *supra* note 89 at 6-11.

⁹⁹ J. Boone Kauffman et al., *Forum: Climate, Ecological, and Social Costs of Livestock Grazing on Western Public Lands*, 72 ENV'T MGMT., 699 (July 2023), doi: 10.1007/s00267-023-01853-6 ("GHG emissions from cattle on public lands equaled 12.4 million tons of CO₂e/year. At the scale of land use planning utilized by federal agencies, GHG emissions associated with allocated livestock numbers will typically exceed US Environmental Protection Agencies' reporting limits (25,000 t) for certain industrial greenhouse gas emitters. As such, these are essentially unreported sources of GHG emissions from public lands.").

¹⁰⁰ J. Boone Kauffman et al., *Livestock Use on Public Lands in the Western USA Exacerbates Climate Change: Implications for Climate Change Mitigation and Adaptation*, 69 ENV'T MGMT., 1137, 1141 (Apr. 2022) doi: 10.1007/s00267-022-01633-8.

¹⁰¹ *Id.* at 1143.

¹⁰² Minna Zhang et al., *Experimental impacts of grazing on grassland biodiversity and function are explained by aridity*, NATURE COMMS., 1,1 (Aug. 2023), <https://doi.org/10.1038/s41467-023-40809-6>.

¹⁰³ Thomas L. Fleischner, *Ecological Costs of Livestock Grazing in Western North America*, 8 CONSERVATION BIOLOGY, 629, 631 (Sep. 1994), <https://www.jstor.org/stable/2386504> (the ecological costs of grazing include reduced density and biomass of many plant and animal species, reduced biodiversity, and impediments to nutrient cycling); Robert L. Beschta et al., *Adapting to Climate Change on Western Public Lands: Addressing the Ecological Effects of Domestic, Wild, and Feral Ungulates*, 51 ENV'T MGMT, 474, 480 (2013), <https://doi.org/10.1007/s00267-012-9964-9> ("Livestock grazing and trampling can reduce the capacity of rangeland vegetation and soils to sequester carbon. . .heavy grazing over the long term may have adverse impacts. . .")

¹⁰⁴ Megan K. Creutzburg et al., *Forest management scenarios in a changing climate: trade-offs between carbon, timber, and old forest*, 27.2 ECOLOGICAL APPLICATIONS, 503-518 (Mar. 2017) <https://doi.org/10.1002/eap.1460>.

¹⁰⁵ Crimmins, *supra* note 89, at 6-11.

¹⁰⁶ Anne E. Kelly & Michael L. Goulden, *Rapid shifts in plant distribution with recent climate change*, 105.33 PNAS, 11823- 11826 (Aug. 2008) <https://doi.org/10.1073/pnas.0802891105>.

adaptable to warming.¹⁰⁷ Indeed, climate change is affecting ecosystem resilience, triggering shifted species ranges, reduced biodiversity, and changed timing of biological processes.¹⁰⁸

Meanwhile, the pressure of development on public lands is increasing,¹⁰⁹ but declined land health has made public lands less able to adapt to and recover from heavy human uses.¹¹⁰ Decreased ecosystem resilience has reduced the ability of ecological systems to resist and recover from land-use activities and disturbance.¹¹¹ Unsustainable land use practices diminish the productivity of public lands.¹¹² The diminishment of ecosystem good and services means less food for people, feed for animals, and forage for wildlife.¹¹³ Poor ecosystem health impacts the viability of other land uses. Grazing and timber harvest leases, for example, rely on resilient soils that produce forage and healthy forests.

Conservation, restoration, and mitigation are part of the solution to the environmental crisis on BLM lands. Science is clear that while landscape degradation should be avoided in the first place, degraded landscapes can and should be restored through careful management.¹¹⁴ The Public Lands Rule provides direction for BLM to improve ecosystem resilience through modernized management. Land use decisions that consider the interactions of climate change and land management can promote ecosystem resilience.¹¹⁵ Restoration, conservation, and mitigation are essential for long-term landscape health, and are necessary to abate negative impacts of other uses of public lands. Cessation of grazing, in addition to restoration efforts, help reverse the impacts of overgrazing and are linked to increased carbon sequestration of rangelands.¹¹⁶ Conservation protects species and their habitats, especially after development-

¹⁰⁷ Crimmins, *supra* note 89, at 6-11.

¹⁰⁸ *Id.* at 6-13.

¹⁰⁹ See Miranda H. Mockrin et al., *Sprawling and diverse: The changing U.S. population and implications for public lands in the 21st Century*, J.OF ENV'T MGMT., 153, 161 (June 2018) <https://doi.org/10.1016/j.jenvman.2018.03.053>.

¹¹⁰ Crimmins, *supra* note 89 at 6-13.

¹¹¹ Qiaohong Sun et al., *A Global, Continental, and Regional Analysis of Changes in Extreme Precipitation*, AM. METEOROLOGICAL SOC'Y, 243-258 (Jan. 2021) <https://doi.org/10.1175/JCLI-D-19-0892.1>.

¹¹² Crimmins, *supra* note 89, at 6-14.

¹¹³ *Id.* at 6-11.

¹¹⁴ John A. Stanturf, *Chapter 5 - Landscape degradation and restoration*, SOILS AND LANDSCAPE RESTORATION, ACADEMIC PRESS, 125- 159 (2021) <https://doi.org/10.1016/B978-0-12-813193-0.00005-9>. (“Responding to the adverse consequences of land degradation requires a two-pronged approach: (1) avoiding or at least reducing degradation and (2) restoring degraded ecosystems.”)

¹¹⁵ Crimmins, *supra* note 89, at 6-14.

¹¹⁶ Kauffman et al., *supra* note 100, at 1143; Neil E. West, *Vegetation Change after 13 Years of Livestock Grazing Exclusion on Sagebrush Semidesert in West Central Utah*, 37.3 J. OF RANGE MGMT., 262-264 (May 1894) [doi: 10.2307/3899152](https://doi.org/10.2307/3899152) (after 13 years of excluding livestock grazing, vegetation did not revert to

focused uses of public lands fragment wildlife habitat.¹¹⁷ Mitigation leasing provides industry with a tool to offset impacts from extractive uses on public lands. Advanced mitigation and mitigation banking are critical tools to offset negative environmental impacts, like the degradation of wetlands or greenhouse gas emissions.¹¹⁸ Thus, the Rule's Conservation Leasing is an essential balance mechanism, one that reinforces and advances FLPMA's multiple use mandate.

In the Proposed Rescission, BLM proposes to respond to deteriorating conditions on BLM lands by eliminating the Rule's critical Conservation Leasing framework—a science-backed tool to mitigate adverse impacts and prevent further degradation on BLM's vast land holdings—based on the unsupported notion that the Rule is not authorized by FLPMA.

i. State Land Use Planning

A rescission of the Rule threatens to disrupt States' land use and land management plans, which depend on the continued existence of Conservation Leasing.

In California, as mitigation for five large energy projects, 215,000 acres of land (Rudnick Common Allotment #05008, within Onyx Ranch) has been permanently retired from grazing for the specific benefit of desert tortoise and Mohave ground squirrel. This arrangement permanently allocates the forage to wildlife so that habitat can regenerate without continued grazing impacts, which are significant and can last for decades in desert environments.¹¹⁹ Allocating the forage to wildlife use is consistent with an applicable Endangered Species Act, Section 7 Biological Opinion (8-8-13-F-43) in accordance with section 122(b) of the Consolidated Appropriations Act of 2012 (Public Law 112-74), and consistent with BLM-California Instruction Memorandum (IM) CA-2015-009 dated December 11, 2014. In addition to the grazing relinquishment, over \$17 million was deposited into an endowment account held by the National Fish and Wildlife Foundation for wildlife enhancement actions within Onyx Ranch. If these conservation actions are impacted in any way by the Proposed Rescission, impacts associated with 16,453 acres of constructed energy projects will be unmitigated, likely necessitating consultation under the federal Endangered Species Act and the California Endangered Species Act.

healthier grass-dominated state. "Land degradation, once underway, may not reverse by passive conservation; active restoration and careful land use is required.)

¹¹⁷ Christina Banks-Leite et al., *Countering the effects of habitat loss, fragmentation, and degradation through habitat restoration*, 3.6 ONE EARTH, 672-676 (Dec. 18, 2020) <https://doi.org/10.1016/j.oneear.2020.11.016>.

¹¹⁸ IUCN COMM'N ON ECOSYSTEM MGMT., *Mitigation banking and offsetting in the United States: Balancing development with conservation* (Sep. 26, 2024) <https://www.impactmitigation.org/resources/mitigation-banking-and-offsetting-in-the-united-states-balancing-development-with-conservation>.

¹¹⁹ U.S. BUREAU OF LAND MGMT., *BLM and CDFW collaborate on innovative conservation agreement to restore wildlife habitat on public lands* (Jun. 29, 2022), <https://www.blm.gov/press-release/blm-and-cdfw-collaborate-innovative-conservation-agreement-restore-wildlife-habitat>; Bellefield Solar Farm, Habitat Conservation Plan, 13-16 (January 31, 2022).

ii. Environmental Policy Goals

The Rule's Conservation Leasing, along with its framework for designating and protecting ACECs, will help the States meet their legislatively adopted environmental policy goals.

For example, California adopted a goal of conserving 30% of its lands and coastal waters by 2030—known as 30x30,¹²⁰ in order to restore biodiversity, expand access to nature, and mitigate the impacts of climate change.¹²¹ Currently, California has classified approximately 26.5 million acres (26.10% of California) of terrestrial area as acres to be conserved,¹²² including BLM managed land.¹²³ The Rule's expanded framework for ACECs designations is helping California meet these goals by ensuring sensitive landscapes, plants, and species, get the special management attention they require. The Proposed Rescission would jeopardize this effort and prevent California from meeting its 30x30 objective.

Other California policy goals that would be impacted by a rescission of the Public Lands Rule include, but are not limited to, the following:

- **Wildfire and Forest Resilience Action Plan.**¹²⁴ This plan, published in January 2021, and currently being updated, specifically calls on BLM, which owns 1.2 million acres of forest and woodlands, to protect forest health on 10,000 to 15,000 acres annually by 2025. Given limited capacity and funding for conservation and restoration land management, Conservation Leasing offers an opportunity for other entities to manage BLM lands to achieve the targets set forth in this plan.
- **Nature-Based Solutions Climate Targets.**¹²⁵ This plan sets quantitative goals for the nature-based solutions climate target that support durable and sustainable carbon stocks across multiple habitat types, including sparsely vegetated lands (deserts), grasslands and forests, all of which are represented in the 15 million acres owned and managed by BLM in California. Conservation Leasing contributes directly to meeting these targets.

¹²⁰ Executive Order N-892-20 (Oct. 7, 2020), available at <https://www.gov.ca.gov/wp-content/uploads/2020/10/10.07.2020-EO-N-82-20-.pdf>. Codified by SB 337 (2023), amending Public Resources Code § 71450.

¹²¹ *Id.*

¹²² CAL. NAT. RES. AGENCY, *Conserving 30 percent of California's lands and coastal waters by 2030*, <https://www.californianature.ca.gov/> (last visited Oct. 21, 2025).

¹²³ See CAL. NAT. RES. AGENCY, *Conserved Areas Explorer*, <https://experience.arcgis.com/experience/83b5c08cae8b47d3b7c623f2de1f0dcc> (last visited Oct. 21, 2025).

¹²⁴ CAL. DEP'T OF WATER RES., *Wildfire and Forest Resilience Action Plan*, available at <https://wildfiretaskforce.org/wp-content/uploads/2022/04/californiawildfireandforestresilienceactionplan.pdf> (Jan. 2021).

¹²⁵ *California's Nature-Based Solutions Climate Targets*, available at <https://resources.ca.gov/-/media/CNRA-Website/Files/Initiatives/Expanding-Nature-Based-Solutions/Californias-NBS-Climate-Targets-2024.pdf> (April 22, 2024).

- **2022 Scoping Plan for Achieving Carbon Neutrality.**¹²⁶ This plan lays out a path to achieve targets for carbon neutrality and reduce anthropogenic greenhouse gas emissions by 85 percent below 1990 levels no later than 2045. Critical to reaching carbon neutrality is achieving the forementioned Nature-Based Solutions Climate Targets and ensuring that California’s natural lands are managed to mitigate climate impacts, which the Public Lands Rule prioritizes.
- **Outdoors for All Strategy.**¹²⁷ Outdoors for All is a State strategy focused on providing outdoor spaces for people to connect with nature. Most BLM-managed land in California is open to recreational use, but under this strategy, land must be managed to protect the natural resources that draw recreationists to these open spaces. For hiking, rockhounding, dispersed camping and more, BLM lands in a resilient and healthy natural state are an essential part of achieving Outdoors for All objectives.

Additionally, Colorado’s Department of Natural Resources is working hard to improve conservation and recreation outcomes across a variety of state programs and policies. These include Colorado’s Outdoor Strategy, which seeks to identify the highest priorities on the landscape for both conservation and outdoor recreation;¹²⁸ the Habitat Conservation and Connectivity Plan, which identifies ways to protect wildlife corridors across the state to facilitate natural movements, migration, dispersal, safe road crossing, genetic exchange, and adaptation to climate and other environmental changes;¹²⁹ and the State Wildlife Action Plan.¹³⁰ Rescission of the Public Lands Rule will hamper Colorado’s ability to rely on BLM to support these state policy goals.

In sum, the Rescission Rule threatens States’ significant interests in preserving our environments and achieving environmental policy goals.

Public Health Interests. The States have an interest in preventing public health problems that may result from federal land management decisions that adversely impact States residents. The Public Lands Rule confers public health benefits to States’ residents by way of management for “landscape intactness” and “ecosystem resilience.”¹³¹ Resilient ecosystems are more capable

¹²⁶ *2022 Scoping Plan for Achieving Carbon Neutrality*, available at <https://ww2.arb.ca.gov/sites/default/files/2023-04/2022-sp.pdf> (December 2022).

¹²⁷ *Outdoors for All: Providing Equitable Access to Parks and Nature*, available at https://resources.ca.gov/-/media/CNRA-Website/Files/Initiatives/Access-for-all/Outdoors_for_All_Strategy_English.pdf (November 2023).

¹²⁸ *Colorado’s Outdoors Strategy* (2025), available at <https://cpw.widen.net/s/jpgblrshdz/final-cos-full-strategy-with-appendices-2025-04>.

¹²⁹ See State of Colorado, Senate Joint Resolution 21-021 (2021), available at https://leg.colorado.gov/sites/default/files/2021a_sjr021_signed.pdf.

¹³⁰ COLORADO PARKS & WILDLIFE, *State Wildlife Action Plan*, <https://cpw.state.co.us/state-wildlife-action-plan> (last visited Nov. 6, 2025).

¹³¹ 89 Fed. Reg. 40,310.

of yielding ecosystem services—including food, clean water, clean air, and recreation opportunities—which in turn keep communities healthy.¹³² Investments in nature can double as investments in public health. Moreover, intact landscapes confer public health benefits in the form of open space in which States’ residents may visit and recreate. Human exposure to natural environments results in better respiratory outcomes, including reduced asthma risk, and improved cognitive function, blood pressure, and mental health, among other health benefits.¹³³

A rescission of the Public Lands Rule would harm public health—by eliminating the management directive for ecosystem resilience and intact landscapes and limiting BLM’s leasing authority to exclusively “productive uses,” which BLM narrowly identifies as grazing, mining, and energy development.¹³⁴ Nearly 40% of BLM-managed public lands in the lower 48 states are in the wildland urban interface, where wild zones meet human communities.¹³⁵ States’ residents may face negative impacts associated with an increase in leases for these uses. Upstream oil and gas development on public land can cause a host of poor health outcomes for nearby communities.¹³⁶ Mine tailings on public lands can lead to heavy metal contamination of nearby communities’ drinking water, and may cause anemia, liver problems, and birth defects.¹³⁷ Cattle grazing can lead to fecal coliform bacteria in a water supply.¹³⁸ If the Rule’s stakeholder engagement mechanisms are eliminated, residents will lose opportunities to provide input on BLM land use and management decisions occurring nearby their communities.¹³⁹

States have an interest in preserving the Public Lands Rule’s Conservation Leasing for the benefit of vulnerable communities. Communities with environmental justice concerns

¹³² Integrating Public and Ecosystem Health Systems to Foster Resilience, A Workshop to Identify Research to Bridge the Knowledge-to-Action Gap, National Academies of Sciences, Engineering, and Medicine. The National Academies Press (2023), <https://doi.org/10.17226/26896>.

¹³³ Marcia P. Jimenez et al., *Associations between Nature Exposure and Health: A Review of the Evidence*, INT. J. ENV’T RES. AND PUB. HEALTH 1, 1 (Apr. 30, 2021), <https://doi.org/10.3390/ijerph18094790>.

¹³⁴ 90 Fed. Reg. 43,991.

¹³⁵ U.S. BUREAU OF LAND MGMT., *A Critical Call to Restore our Public Lands*, 10, (Nov. 2024), available at https://www.blm.gov/sites/default/files/docs/2024-11/Restoration%20Blueprint%20508_0.pdf.

¹³⁶ Jill E. Johnston et al., *Impact of upstream oil extraction and environmental public health: a review of the evidence*, 657 SCI TOTAL ENV’T 187, 187 (Mar. 20, 2019), [doi: 10.1016/j.scitotenv.2018.11.483](https://doi.org/10.1016/j.scitotenv.2018.11.483). (“potential health impacts due to exposure to upstream oil extraction, such as cancer, liver damage, immunodeficiency, and neurological symptoms. Adverse impacts to soil, air, and water quality in oil drilling regions were also identified.”)

¹³⁷ Mohsen Moghimi Dehkordi et al., *Soil, air, and water pollution from mining and industrial activities: Sources of pollution, environmental impacts, and prevention and control methods*, 23 RESULTS IN ENGINEERING, 1, 2 (Sept. 2024), <https://doi.org/10.1016/j.rineng.2024.102729>.

¹³⁸ Robert W. Derlet et al., *Impact of Summer Cattle Grazing on the Sierra Nevada Watershed: Aquatic Algae and Bacteria*, J. ENV’T PUB. HEALTH, 1, 5 (Feb. 21, 2012), <https://doi.org/10.1155/2012/760108>.

¹³⁹ See 89 Fed. Reg. 40,312.

already bear a disproportionate burden of environmental harms and adverse health outcomes from disproportionate exposure to environmental risks.¹⁴⁰ Evidence-based studies demonstrate that certain communities most commonly and acutely experience the impacts of both environmental injustice and the harms associated with climate change: communities of color;¹⁴¹ Indigenous people and Tribal nations;¹⁴² low-income,¹⁴³ rural,¹⁴⁴ and unincorporated communities.¹⁴⁵

In California, vulnerable communities adjacent to BLM land, including Indio¹⁴⁶ and Mecca,¹⁴⁷ face increased public health risks from the Proposed Rescission given their proximity to BLM lands. The unincorporated community of Mecca in the Coachella Valley already faces

¹⁴⁰ Michael Gochfeld & Joanna Burger, *Disproportionate Exposures in Environmental Justice and Other Populations: The Importance of Outliers*, 101.S1 AM. J. PUB. HEALTH, S53, S53 (Dec. 2011), [doi: 10.2105/AJPH.2011.300121](https://doi.org/10.2105/AJPH.2011.300121).

¹⁴¹ Christopher W. Tessum et al., *PM2.5 Polluters Disproportionately and Systemically Affect People of Color in the United States*, 7 SCI. ADVANCES 18 (Apr. 28, 2021), <https://www.science.org/doi/10.1126/sciadv.abf4491>; see also United Church of Christ Comm’n for Racial Just., *Toxic Wastes and Race in the United States: A National Report on the Racial and Socio-Economic Characteristics of Communities with Hazardous Waste Sites* (1987), https://ia801402.us.archive.org/21/items/toxicwastesrace/toxicwastesrace_text.pdf

¹⁴² U.N. SPECIAL RAPPORTEUR, *End of Mission Statement by the United Nations Special Rapporteur on the Rights of Indigenous Peoples, Victoria Tauli-Corpuz of Her Visit to the United States of America* (Mar. 3, 2017), <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=21274&LangID=E>.

¹⁴³ Ihab Mikati et al., *Disparities in Distribution of Particulate Matter Emission Sources by Race and Poverty Status*, 108.4 AM. J. PUB. HEALTH 480, 484 (Apr. 2018) [doi: 10.2105/AJPH.2017.304297](https://doi.org/10.2105/AJPH.2017.304297).

¹⁴⁴ Monica Sanders, *Understanding Environmental Justice in Rural Communities*, FORBES (Aug. 26, 2024, 9:30 AM EDT) <https://www.forbes.com/sites/monicasanders/2024/04/26/understanding-environmental-justice-in-rural-communities/>.

¹⁴⁵ Cristina Gomez-Vidal & Anu Manchikanti Gomez, *Invisible and Unequal: Unincorporated Community Status as a Structural Determinant of Health*, 285 SOC. SCI. & MED. 114291, 114292 (2021) <https://doi.org/10.1016/j.socscimed.2021.114292>.

¹⁴⁶ CAL. OFF. OF ENV’T HEALTH HAZARD ASSESSMENT, *CalEnviroScreen 4.0*, https://experience.arcgis.com/experience/11d2f52282a54ceebcac7428e6184203/page/CalEnviroScreen-4_0 (last visited Oct. 23, 2025) (CalEnviroScreen 4.0 score: 88%; 92% Hispanic).

¹⁴⁷ *Id.* (CalEnviroScreen 4.0 score: 82%; 97% Hispanic).

drinking water contamination issues¹⁴⁸ and poor air quality,¹⁴⁹ in addition to high rates of poverty and unemployment.¹⁵⁰ The community is adjacent to BLM’s holdings in the Mecca Hills and Orocopia Mountains to the East, and the Santa Rosa Mountains to the West. Increased leasing for extractive uses on these BLM lands could exacerbate pollution burdens on this already disadvantaged community.

Economic Interests. Additionally, States and our residents have economic interests in preserving the Public Lands Rule. Conservation of BLM-managed land is not only lucrative in and of itself, *see* Section VII.A., but undeveloped public lands host outdoor recreation—including camping, hunting, fishing, hiking, running, and biking—and nature-based tourism in the States.¹⁵¹ Conservation is popular.¹⁵² Many people visit BLM lands to observe the area’s wildlife and scenic values.¹⁵³ Quality outdoor recreation and public lands tourism depend on land health.

Public lands tourism benefits the States in the form of jobs and new business development. In 2021, recreation on BLM lands supported \$11 billion in national economic

¹⁴⁸ CNTY. OF RIVERSIDE DEP’T OF ENV’T HEALTH, *Information Regarding Arsenic in Wells Located in Coachella Valley*, (Revised Jan. 2020), <https://rivcoeh.org/sites/g/files/aldnop361/files/migrated/Portals-0-PDF-Home-Safety-71-10-EPO-Arsenic-in-Lower-Coachella-Valley.pdf> (“some wells in parts of the lower Coachella Valley such as Mecca, Oasis, Thermal and North Shore produce water with elevated levels of arsenic.”)

¹⁴⁹ Alejandra Reyes-Velarde, *Danger in the dust: Coachella Valley Residents struggle to breathe*, CALMATTERS (Aug. 1, 2024) <https://calmatters.org/environment/2024/08/coachella-valley-air-pollution/> (In Mecca, the maximum PM₁₀ concentrations recorded were three times higher than the amount deemed safe over the past two years.)

¹⁵⁰ *Mecca, California Poverty Data*, CITY-DATA.COM, <https://www.city-data.com/poverty/poverty-Mecca-California.html> (last visited Oct. 22, 2025) (In 2023, 19.3% of Mecca residents had an income below the poverty level. The statewide average was 12.0%.)

¹⁵¹ U.S. BUREAU OF LAND MGMT., *Discover the outdoors: 10 unforgettable recreational activities on public lands*, (June 20, 2025) <https://www.blm.gov/blog/2025-06-20/discover-outdoors-10-unforgettable-recreational-activities-public-lands>.

¹⁵² COLORADO COLL. STATE OF THE ROCKIES PROJECT, *Westerners Who Prefer Public Land Conservation Over Energy Development Reaches All Time High*, (Feb. 2025) <https://www.coloradocollege.edu/other/stateoftherockies/conservationinthewest/2025-poll-data/CC%20Poll%202025%20-%20National%20Press%20Release.pdf> (finding that 72% of voters in eight Western states— Arizona, Colorado, Idaho, Montana, Nevada, New Mexico, Utah, and Wyoming— want the government to prioritize conservation over increased energy development on public lands.)

¹⁵³ U.S. BUREAU OF LAND MGMT., *Celebrating the power of public lands through tourism and community impact*, (May 5, 2025) <https://www.blm.gov/blog/2025-05-05/celebrating-power-public-lands-through-tourism-and-community-impact>.

output and 76,000 jobs.¹⁵⁴ In 2023, outdoor activities contributed \$81.5 billion to California's economy.¹⁵⁵ The outdoor recreation industry generated about 545,500 California jobs that year, growing to about 2.9% of the state's total employment.¹⁵⁶ On BLM land specifically, California's 2023 total economic output for recreation was \$1.6 billion, which was the second highest economic output of BLM land within the state after renewable energy development, at \$4.3 billion.¹⁵⁷ The report found that BLM-managed lands in California received 14.7 million visitors at 630 different recreation sites, which "brought recreation spending to communities."¹⁵⁸

In Colorado, the statewide total economic output associated with outdoor recreation by Colorado residents amounts to \$65.8 billion dollars, contributing \$36.5 billion dollars to the Gross Domestic Product of the state. This economic activity supports over 404,000 jobs in the state, which represents 12% of the entire labor force in Colorado and produces \$22.2 billion dollars in salaries and wages. In addition, this output contributes \$11.2 billion dollars in local, state and federal tax revenue.¹⁵⁹

In New Mexico, public lands drive the state's economy. The outdoor recreation industry comprised over 2 % of the entire state economy in 2023, generating \$3.2 billion in economic output.¹⁶⁰ Of that total, BLM-managed public lands alone drew more than four million visitors, resulting in more than \$200 million flowing back into New Mexico's economy.¹⁶¹ Visits to state, federal, or Tribal lands and attractions reverberate economically throughout the state. In 2022, the total economic impact of tourism in New Mexico was over \$11 billion, generating almost \$800 million in state and local taxes used to fund the state's strained systems and

¹⁵⁴ U.S. BUREAU OF LAND MGMT., *Valuing America's Public Lands 2024*, https://www.blm.gov/sites/default/files/docs/2024-11/BLM-Valuing-Americas-Public-Lands-2024_508.pdf (last visited Oct. 28, 2025).

¹⁵⁵ BUREAU OF ECON. ANALYSIS, *Outdoor Recreation Satellite Account, 2023- California*, <https://apps.bea.gov/data/special-topics/orsa/summary-sheets/ORSA%20-%20California.pdf> (last visited Oct. 27, 2025).

¹⁵⁶ *Id.*

¹⁵⁷ *Valuing America's Public Lands 2024*, *supra* note 155.

¹⁵⁸ *Id.*

¹⁵⁹ COLORADO PARKS & WILDLIFE, *The 2023 Economic Contributions of Outdoor Recreation in Colorado*, ii, (Sept. 26, 2024), available at <https://swiftmedia.s3.amazonaws.com/mountain.swiftcom.com/images/sites/2/2024/10/14134722/SCORP.pdf>.

¹⁶⁰ BUREAU OF ECON. ANALYSIS, *Outdoor Recreation Satellite Account, 2023- New Mexico*, <https://apps.bea.gov/data/special-topics/orsa/summary-sheets/ORSA%20-%20New%20Mexico.pdf> (last visited Oct. 28, 2025) (hereinafter "OSRA New Mexico").

¹⁶¹ *Valuing America's Public Lands 2024*, *supra* note 155.

infrastructure.¹⁶² In New Mexico, the outdoor recreation industry sustains nearly 30,000 jobs in the state, accounting for over 3% of the state’s overall employment.¹⁶³ From 2020 to 2022, New Mexico’s outdoor recreation employment grew by over 18%, placing it at fifth in the country in industry growth.¹⁶⁴ One study found that the trails in two of the poorest counties in New Mexico, with poverty rates at 24% and 34%, generated \$1.7 million in visitor spending and \$127,000 in state and local tax revenue.¹⁶⁵ New Mexico designated outdoor recreation as a “target sector” for economic development, increasing investment in maintaining and restoring natural attractions, while expanding access.¹⁶⁶

BLM lands form part of the overall outdoor landscape in Washington and provide opportunities to enjoy scenic vistas, hunting, camping, fishing, and hiking, all of which attract business development within the State. Washington State sees billions of dollars’ worth of benefit from outdoor recreation. More broadly, outdoor recreation in Washington supports \$26.5 billion in annual expenditures from residents and tourist on trips, fishing, boating, and outdoor recreation gear.¹⁶⁷ This amounts to over \$40 billion in total economic contributions to the State. The BLM lands within Oregon and Washington have a total economic output of \$2.5 billion dollars.¹⁶⁸ This includes \$699 million dollars in recreation economic output in Washington and Oregon.¹⁶⁹ Looking just at Washington BLM lands, it was recently estimated that recreation activities lead \$43,672 annual expenditures within the state and a consumer economic benefit from visiting BLM lands of \$51,717 annually.¹⁷⁰

An interpretation of FLPMA that limits or unreasonably prioritizes uses such as grazing and extraction will diminish scenic values and public access and is likely to adversely impact outdoor recreation and important tourism funds to States and nearby communities.

¹⁶² NEW MEXICO ECON. DEV. DEP’T, *Supporting the Tourism Economy in New Mexico*, (May 28, 2024) <https://edd.newmexico.gov/wp-content/uploads/2024/06/NM-Tourism-Department-Presentation.pdf>.

¹⁶³ *OSRA New Mexico*, *supra* note 161.

¹⁶⁴ *Supporting the Tourism Economy in New Mexico*, *supra* note 163.

¹⁶⁵ Megan Lawson, Ph.D, *The economic future of outdoor recreation in New Mexico’s Cibola and McKinley counties*, HEADWATERS ECON., (Dec. 11, 2024) <https://headwaterseconomics.org/outdoor-recreation/outdoor-recreation-in-new-mexicos-cibola-and-mckinley-counties/>.

¹⁶⁶ NEW MEXICO ECON. DEV. DEP’T, *New Mexico’s Target Industries*, <https://edd.newmexico.gov/choose-new-mexico/key-industries/> (last visited Nov. 4, 2025).

¹⁶⁷ Johnny Mojica & Angela Fletcher, *Economic Analysis of Outdoor Recreation in Washington State*, EARTH ECON., 13, (2020) available at <https://rco.wa.gov/wp-content/uploads/2020/07/EconomicReportOutdoorRecreation2020.pdf>.

¹⁶⁸ *Valuing America’s Public Lands 2024*, *supra* note 155, at 2.

¹⁶⁹ *Id.*

¹⁷⁰ *Economic Analysis of Outdoor Recreation in Washington State*, *supra* note 168, at 15, 21.

iii. Third-Party Leasing

Finally, States have a significant interest in preserving the Public Lands Rule's Conservation Leasing because they provide a mechanism for third parties benefitting from utilizing public lands productively in one area to offset these impacts by conserving damaged BLM lands within States. The Rule's Conservation Leasing allows BLM to leverage private funds to pay for conservation, which relieves burdens on state and federal agencies to fund and undertake these efforts. "Qualified entities" to hold Conservation Leases under the Rule include States, States' residents and other non-federal actors, providing a low cost, high yield way for BLM to balance uses and achieve its multiple use and sustained yield mandate.¹⁷¹ Allowing private parties to secure conservation leases helps achieve States' policy goals, in addition to outsourcing assistance to address mounting climate change impacts on public lands.

B. Rescission of the Public Lands Rule could diminish States' meaningful coordination with BLM on land use and management decisions within our States.

A rescission of the Public Lands Rule could impair States' ability to meaningfully coordinate with BLM on land use and management planning. FLPMA requires that BLM advise State and local governments on land use planning actions, including the development and adoption of rules and guidelines for the management and use of the public lands. BLM must "coordinate the land use inventory, planning, and management activities of or for [the public] lands with the land use planning and management programs of . . . the States and local governments within which the lands are located" and "provide for meaningful public involvement of State and local government officials, both elected and appointed, in the development of land use programs, land use regulations, and land use decisions for public lands."¹⁷² Significant time and effort from the States and the public went into the initial scoping and establishment of the Public Lands Rule. If this Rule is summarily rescinded, it will call into question the validity of public processes and decrease public and government partner participation in future federal rulemakings. If the Public Lands Rule's Conservation Leasing is repealed, it will impede States' abilities to meaningfully weigh in on the development of land use programs and decisions. BLM should evaluate how the Proposed Rescission would affect its relationships with States and local agencies.

Additionally, States have an interest in preserving co-management relationships with BLM on joint conservation projects. CDFW has several parcels and projects it co-manages with BLM that depend upon conservation, mitigation, and restoration being allowable uses of public land under FLPMA.

In California, the co-management of the Onyx Ranch lands will occur by utilizing private mitigation dollars for enhancement actions on BLM lands. Also in California, BLM and CDFW coordinate closely on the management of the Carrizo Plains National Monument (250,000 acres), Carrizo Plains Ecological Reserve (38,900 acres), and North Carrizo Ecological Reserve (12,000

¹⁷¹ See 89 Fed. Reg. 40,311.

¹⁷² 43 U.S.C. § 1712(c)(9).

acres). The Ecological Reserves are owned and managed by CDFW. Interagency coordination allows for a single large contiguous area with consistent management, which is essential for the effective conservation and management of species such as the blunt-nosed leopard lizard, giant kangaroo rat, San Joaquin antelope squirrel, San Joaquin kit fox, western burrowing owl, pronghorn antelope, and Tule elk.

The Proposed Rescission could disrupt state and federal coordination by prohibiting BLM from considering, and states supporting, Conservation Leasing as part of BLM land use plans within our States.

The Public Lands Rule confers tangible benefits to States as well as to the environment. The Rule protects natural resources, wildlife, Tribal and cultural resources, and scenic values for long-term benefit and enjoyment of residents and visitors. To satisfy its multiple use and sustained yield mission, BLM must manage its lands for resilient, healthy landscapes that can fully support multiple uses. The States have a strong interest in maintaining the Public Lands Rule. Before BLM makes a final decision on the Proposed Rescission, it must consider these benefits, the States' interests in the Rule, and the adverse consequences that the Proposed Rescission would generate.

VI. THE PROPOSED RESCISSION IS CONTRARY TO LAW IN VIOLATION OF FLPMA AND THE ADMINISTRATIVE PROCEDURE ACT.

BLM's Proposed Rescission is contrary to law and violates the APA because it is based on an arbitrary and erroneous interpretation of FLPMA, which is directly at odds with the statutory text, FLPMA's legislative history, judicial interpretations, and decades of BLM policy. Under the APA, an agency action is unlawful if it is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law" or "without observance of procedure required by law."¹⁷³

In the Proposed Rescission, BLM proffers a novel interpretation of FLPMA's multiple use mandate to fit the President's current policy goals in violation of the statute and legal precedent. BLM wrongly asserts that the Public Lands Rule is "contrary to the BLM's mandate and statutory authority" because conservation is "not a use" under FLPMA.¹⁷⁴ BLM seeks to rewrite FLPMA, such that the only allowable uses are so-called "productive uses," which BLM limits to "grazing, mining, and energy development."¹⁷⁵ This flouts the statutory text and is a stark departure from BLM's decades-long statutory interpretation of its mission, which is best articulated in the Public Lands Rule: "FLPMA's animating principles of multiple use and

¹⁷³ 5 U.S.C. § 706(2).

¹⁷⁴ See 90 Fed. Reg. 43,991.

¹⁷⁵ *Id.*

sustained yield embrace conservation use as an integral component of the BLM’s stewardship of the public lands.”¹⁷⁶

A. Plain Text of FLPMA

FLPMA mandates that BLM manage public lands for “multiple use” and “sustained yield.”

Multiple Use. In FLPMA, Congress declared that BLM land must be managed for multiple uses.¹⁷⁷ Congress defined the term “multiple use” as, in relevant part:

a combination of balanced and diverse resource uses that takes into account the long-term needs of future generations for renewable and nonrenewable resources, including, but not limited to, recreation, range, timber, minerals, *watershed, wildlife and fish, and natural scenic*, scientific and historical values; and harmonious and coordinated management of the various resources *without permanent impairment of the productivity of the land and the quality of the environment . . .*¹⁷⁸

“The term ‘multiple use’ means the management of the public lands and their various resource values so that they are utilized in the combination that will best meet the present and future needs of the American people.”¹⁷⁹ Congress enumerates watershed, wildlife and fish, and natural scenic values as uses of BLM lands. As discussed above, conservation, restoration, and mitigation, which are integral to the Public Lands Rule, are both allowable uses of public land and are scientifically recognized management tools. Importantly, the multiple use mandate states that BLM should not necessarily make management decisions based on highest economic return of a use or combination of uses.¹⁸⁰

Sustained Yield. BLM’s assertion that the Public Lands Rule interferes with its ability to manage its lands for sustained yield is contradicted by the text of the sustained yield mandate and its definition.¹⁸¹ The sustained yield mandate requires BLM to manage its land for high output of renewable resources in perpetuity.¹⁸² “[S]ustained yield” is defined as “the achievement and maintenance in perpetuity of a high-level annual or regular periodic output of the various renewable resources of the public lands consistent with multiple use.”¹⁸³ As discussed in Section

¹⁷⁶ 89 Fed. Reg. 40,314.

¹⁷⁷ 43 U.S.C. § 1701(a)(7) (“management [of public lands must] be on the basis of multiple use and sustained yield unless otherwise specified by law.”)

¹⁷⁸ *Id.* § 1702(c) (emphasis added).

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

¹⁸¹ *See* 90 Fed. Reg. 43,991.

¹⁸² 43 U.S.C. §1702(h).

¹⁸³ *Id.*

IV, the Public Lands Rule’s Conservation Leasing is the best management tool to ensure long-term sustainability of resources on BLM lands.

Declaration of Congressional Policy. BLM’s “non-use” argument is further contradicted by FLPMA’s declaration of Congressional policy, which identifies environmental protection as part of the multiple use and sustainable yield mandate.¹⁸⁴ FLPMA states,

public lands [must] be managed in a manner that will *protect the quality of* scientific, scenic, historical, *ecological, environmental, air and atmospheric, water resource*, and archaeological values; that, where appropriate, *will preserve and protect certain public lands in their natural condition*; that *will provide food and habitat for fish and wildlife* and domestic animals; that will provide for outdoor recreation and human occupancy and use . . .¹⁸⁵

Thus, FLPMA makes clear that BLM has discretion to choose how to achieve FLPMA’s mandate, including preserving lands in their natural state—i.e., passive use. The declaration of policy does not prescribe a particular “manner” of management, and it directs the agency, where appropriate, to “preserve lands in their natural condition.”¹⁸⁶ Nowhere does it mandate development, or condition that environmental protection be attendant or secondary to, a “productive use” of land. BLM’s attempt to rewrite its statutory mandate to excise conservation as a valid use is therefore arbitrary, inconsistent with BLM’s statutory authority under FLPMA and violates the APA.

The Public Lands Rule’s Conservation Leasing is entirely consistent with FLPMA’s provisions. Neither FLPMA nor its implementing regulations prevent BLM from issuing conservation leases. FLPMA broadly authorizes the Secretary of Interior (Secretary) to “take any action necessary to prevent unnecessary or undue degradation of [public] land[s].”¹⁸⁷ Therefore, even if BLM is doing its “own affirmative land management work” to conserve resources, as suggested in the Proposed Rescission, it does not follow that Conservation Leasing, a discretionary tool, is unnecessary and undermines BLM’s ability to carry out its FLPMA responsibilities.¹⁸⁸

Furthermore, FLPMA enumerates many tools that BLM may use to regulate public lands. Leasing is an entrenched model that BLM already uses for other uses, including oil and gas development, timber, grazing, and mining. The Secretary may issue regulations providing for the *use, occupancy, and development of the public lands through “permits, leases, licenses, published rules, or other instruments as the Secretary deems appropriate.”*¹⁸⁹ Land use

¹⁸⁴ See 90 Fed. Reg. 43,991; 43 U.S.C. § 1701(a)(8).

¹⁸⁵ 43 U.S.C. § 1701(a)(8) (emphasis added).

¹⁸⁶ *Id.*

¹⁸⁷ 43 U.S.C. § 1732(b).

¹⁸⁸ See 90 Fed. Reg. 43,991.

¹⁸⁹ 43 U.S.C. § 1732(b) (emphasis added).

authorizations need only be issued at fair market value and “only for those *uses* that conform with [BLM] plans, policy, objectives and resource management programs.”¹⁹⁰ As discussed above, environmental protection is an established use for which BLM must manage, so BLM is not precluded from issuing conservation leases or permits as it sees fit.

Additionally, FLPMA directs BLM to “give priority” to the designation and protection of ACECs when the agency inventories its lands.¹⁹¹ In the Proposed Rescission, BLM requests public comment “as to whether those legacy ACEC regulations should be restored verbatim, as is proposed, or revised to allow for more efficient and flexible management of ACECs as part of managing under principles of multiple use and sustained yield,” and asserts that “ACEC regulations should be as flexible as possible to allow for productive uses of land consistent with FLPMA.”¹⁹² ACEC regulations may only be flexible to the extent that they comply with FLPMA’s directive to prioritize ACEC designation and management. The Public Lands Rule provides clear regulatory direction to achieve compliance with FLPMA.

B. Legislative History

Congressional policies animate FLPMA’s clear directives. BLM’s assertion that conservation is not a “use” is contrary to Congressional intent underlying FLPMA, as evidenced by FLPMA’s historical context and legislative history.

FLPMA’s historical context clarifies that Congress intended conservation to be a “use” managed on federal public lands. As discussed in Section I, above, Congress enacted FLPMA to remedy widespread degradation of public lands. The Public Land Law Review Commission Report, which influenced the policies of FLPMA, included a policy recommendation that acknowledged that both protection and development of public lands should be objectives of FLPMA, such that only agency actions unrelated to either of those functions needed express authority.¹⁹³

(11) when public lands are managed to accomplish objectives unrelated to protection or development of public lands, the purpose and authority [must] therefore be provided expressly by statute.¹⁹⁴

The centrality of conservation in FLPMA is also reflected in the statements of Henry M. Jackson, then-chairman of the Committee on Energy and Natural Resources. Mr. Jackson stated

¹⁹⁰ 43 C.F.R. § 2920.0-6(a) (emphasis added).

¹⁹¹ See 43 U.S.C. § 1711(a).

¹⁹² 90 Fed. Reg. 43,990.

¹⁹³ H.R. REP. No. 92-1306, 92d Cong., 2d Sess. 35 (1972).

¹⁹⁴ *Id.* at 36-39.

that the “policies contained in [FLPMA] will shape the future development and *conservation* of a valuable national asset, our public lands.”¹⁹⁵

Furthermore, legislative analysis of a 1975 draft of FLPMA’s multiple use definition clarifies that,

the words “quality of the environment” are added so as to require multiple use management decisions which will not result in permanent impairment of the quality of the natural environment. This would meet the recommendation (no. 16) of the Public Land Law Review Commission that “environmental quality should be recognized by law as an important objective of public land management.”¹⁹⁶

Congress clearly intended that conservation is both authorized, and mandated, by FLPMA. It therefore does not follow that BLM acted in excess of authority by using its leasing authority for conservation.

Contrary to BLM’s assertions in the Proposed Rescission, courts have not construed FLPMA’s multiple use mandate to indicate that multiple use only allows for so-called “productive uses.”¹⁹⁷ To the contrary, courts have observed that BLM is not required “to promote one use above others” nor is BLM precluded “from taking a cautious approach to assure preservation of natural and cultural resources.”¹⁹⁸ Rather, “[m]ultiple use” requires BLM to “stri[k]e a balance among the many competing uses to which land can be put.”¹⁹⁹ Courts have maintained that BLM has discretion under FLPMA to determine how to strike such a balance. Indeed, Congress intended that BLM have a variety of tools to achieve its multiple use and sustained yield directive. FLPMA “represents an attempt by Congress to balance the use of the public lands by interests as diverse as the lands themselves.”²⁰⁰ In pursuit of this goal, Congress authorized BLM to “take any action necessary to prevent unnecessary or undue degradation of the lands” and to promulgate regulations necessary to achieve FLPMA’s requirements.²⁰¹ It does not follow that FLPMA narrowly demands management only for so-called “productive uses,” as

¹⁹⁵ Memorandum of the Chairman Henry M. Jackson (1976), *Legislative history of the Federal land policy and management act of 1976 (Public Law 94-579)*, vi, available at <https://archive.org/details/legislativehisto00unse/page/n1/mode/2up>. (emphasis added).

¹⁹⁶ Statement of Mr. Haskell, Report on the Natural Resource Lands Management Act, Committee on Interior and Insular Affairs, (December 18, 1975), *Legislative history of the Federal land policy and management act of 1976 (Public Law 94-579)*, 193, available at <https://archive.org/details/legislativehisto00unse/page/n1/mode/2up>.

¹⁹⁷ 90 Fed. Reg. 43,991.

¹⁹⁸ *Nat’l Mining Ass’n v. Zinke*, 877 F.3d 845, 872 (9th Cir. 2017).

¹⁹⁹ *Norton v. S. Utah Wilderness All.*, 542 U.S. 55, 58 (2004); *see also* 43 U.S.C. § 1702(c) (“multiple use” includes “the use of some land for less than all of the resources”).

²⁰⁰ *Rocky Mtn. Oil & Gas Ass’n v. Watt*, 696 F.2d 734, 738 (10th Cir. 1982).

²⁰¹ *See* 43 U.S.C. §§ 1732(b), 1733(a), and 1740.

BLM now contends.²⁰² “[A] particular parcel need not be put to all feasible uses or to any particular use.”²⁰³ While BLM has discretion in how to carry out its multiple use mandate, it cannot entirely write conservation out of FLPMA.²⁰⁴ FLPMA is “mandatory as to the object to be achieved.”²⁰⁵ Courts have confirmed that environmental health, including conservation, is an objective of FLPMA. “It is past doubt that the principle of multiple use does not require the BLM to prioritize development over other uses. . . . Development is a possible use, which BLM must weigh against other possible uses—including conservation to protect environmental values”²⁰⁶ Indeed, courts have interpreted the multiple use definition to include conservation.²⁰⁷ BLM’s present attempt to write conservation out of FLPMA’s multiple use mandate is at odds with these precedents.

C. Agency Policy

A rescission of the Public Lands Rule on these grounds would not only repeal the Rule, but it would also repudiate the longstanding position of BLM. As recently as June 2025, a BLM report identified the present era of public lands management as one of “resource conservation.”²⁰⁸ BLM acknowledges its duties include conservation for long-term landscape health.²⁰⁹ BLM also acknowledges that public lands may be managed for benefits related to “passive use of ecosystems.”²¹⁰ “Conservation principles, which are already established in BLM administrative policy and instruction memoranda, as well as applicable precedent, will continue to be compatible with many *other uses* and are key to ensuring that the public lands can continue

²⁰² See 90 Fed. Reg. 43,991.

²⁰³ *Nat’l Mining Ass’n*, 877 F.3d at 872 (holding “the principle of multiple use confers broad discretion on an implementing agency to evaluate the potential economic benefits of mining against the long-term preservation of valuable natural, cultural, or scenic resources.”)

²⁰⁴ *Theodore Roosevelt Conservation P’ship v. Salazaar*, 661 F.3d 479, 518 (D.C. Cir. 2010).

²⁰⁵ *Norton*, 542 U.S. at 66.

²⁰⁶ *N.M. ex rel. Richardson v. U.S. Bureau of Land Mgmt.*, 565 F.3d 683, 710–711 (10th Cir. 2009).

²⁰⁷ *Cahill Ranches, Inc. v. U.S. Bureau of Land Mgmt.*, 766 F. Supp. 3d 1079, 1090 (D. Or. 2025) (finding that “[d]edicating specific portions of land within a larger allotment to serve research, education, and conversation purposes . . . certainly fulfills FLPMA’s multiple use mandate.”); see also *Theodore Roosevelt Conservation P’ship v. Salazar*, 661 F.3d 66, 76 (D.C. Cir. 2011) (stating FLPMA’s multiple use and sustained yield mandates require BLM to balance potentially degrading uses with conservation of the natural environment).

²⁰⁸ U.S. BUREAU OF LAND MGMT., *Public Land Statistics 2024*, 1-2, (June 2025), <https://www.blm.gov/sites/default/files/docs/2025-07/BLM-Public-Land-Statistics-2024.pdf>.

²⁰⁹ *Id.*

²¹⁰ U.S. BUREAU OF LAND MGMT., *Valuing Americas Public Lands 2024*, https://www.blm.gov/sites/default/files/docs/2024-11/BLM-Valuing-Americas-Public-Lands-2024_508.pdf (last visited Oct. 22, 2025).

to support multiple uses now and into the future.”²¹¹ By declaring conservation a nonuse, BLM is attempting to abolish an essential use of public lands in violation of the statute.

In sum, the statutory interpretation advanced in the Proposed Rescission violates FLPMA and the APA and exceeds BLM’s authority under FLPMA.

VII. THE PROPOSED RESCISSION IS ARBITRARY AND CAPRICIOUS IN VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT.

Under the APA, an agency action is unlawful if it is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law.”²¹² An agency action is “arbitrary and capricious” where “the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.”²¹³ Essentially, an agency must make a “rational connection between the facts found and the choice made.”²¹⁴ Finally, “[a]gencies are free to change their existing policies,” but they must “provide a reasoned explanation for the change.”²¹⁵

BLM’s Proposed Rescission violates the APA in the following ways: (1) BLM’s justifications for the Proposed Rescission are not supported by science or evidence before the agency; (2) BLM does not adequately explain of the basis for reversing its legal interpretation of FLPMA; (3) BLM fails to consider reliance interests in violation of the APA; and (4) BLM fails to explain its change in position in violation of the APA.

A. BLM’s explanations for the Proposed Rescission run counter to the science and evidence before the agency.

²¹¹ Statement of Nada Wolff Culver, Principal Deputy Director, House Committee Hearing on H.R. 3397, Bill introduced “To Require the Director of the Bureau of Land Management to Withdraw a Rule of the Bureau of Land Management Relating to Conservation and Landscape Health,” 1, (July 15, 2023) available at <https://www.congress.gov/118/meeting/house/116036/witnesses/HHRG-118-II00-Wstate-WolffCulverN-20230615.pdf> (emphasis added).

²¹² 5 U.S.C. § 706(2)(A), (D).

²¹³ *Motor Vehicle Mfrs. Ass’n of the United States, Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (*State Farm*).

²¹⁴ *Burlington Truck Lines, Inc. v. United States*, 371 U. S. 156, 168 (1962).

²¹⁵ *Encino Motorcars, LLC v. Navarro*, 136 S. Ct. 2117, 2125 (2016) (citing *Nat’l Cable & Telecomms. Ass’n v. Brand X Internet Servs.*, 545 U.S. 967, 981–82 (2005); see also *Dep’t of Homeland Sec. v. Regents of the Univ. of Cal.*, 140 S. Ct. 1891, 1913 (2020)).

In a brief five-page explanation for its proposal to repeal the Rule, BLM declares the Rule is “unnecessary” and “undermines” its management of public lands by interfering with the principles of multiple use and sustained yield.²¹⁶ BLM now claims that the Rule’s emphasis on conservation impedes its ability to manage lands for multiple uses, that conservation is a “non-use” and that the Rule’s leasing provisions violate BLM’s multiple use mandate.²¹⁷ These assertions are contradicted by the evidence in the record and are arbitrary and capricious in violation of the APA.

BLM adopted the Rule based on its well-supported determination that the Rule was necessary to “ensure ecosystem resilience” and “prevent degradation” of public lands in order to comply with FLPMA.²¹⁸ BLM noted that its lands were degraded by habitat fragmentation, wildlife, drought, and invasive species, and that degraded lands cannot serve the multiple purposes outlined by FLPMA.²¹⁹ The Proposed Rescission reverses this conclusion, without even acknowledging the agency’s justification for the Rule, or any explanation why the justification is no longer valid, in violation of the APA.²²⁰

Second, the justification in the Proposed Rescission that Conservation Leasing violates FLPMA’s multiple use mandate by removing land from use for other purposes is contradicted by BLM’s own statements in the record. When BLM initially proposed the Public Lands Rule, it sought information from the public on the length of time it should impose for conservation, restoration and mitigation leases.²²¹ Many commenters opined that such leases should have an indefinite date given the length of time it takes for restoration actions to mature and restore an ecosystem.²²² Other commenters claimed that conservation leases would permanently remove land from active uses and impede the agency’s flexibility.²²³ In its final Rule, BLM chose to impose time limits on Conservation Leasing expressly to safeguard other uses of public land under FLPMA.²²⁴ BLM chose to limit restoration and mitigation leases to “the necessary amount of time to meet the lease objective. A lease issued for restoration purposes can be issued for an initial term of up to 10 years, whereas a lease issued for mitigation purposes will be issued for a

²¹⁶ 90 Fed. Reg. 43,991.

²¹⁷ *Id.*

²¹⁸ 43 C.F.R. § 61010.1.

²¹⁹ 89 Fed. Reg. 40,309.

²²⁰ 5 U.S.C. § 706(2)(A).

²²¹ 88 Fed. Reg. 19,591.

²²² *See* Comments of the Attorneys General of Oregon, Connecticut, Illinois, Maryland, New Jersey, New Mexico, Rhode Island and Washington, Comment ID BLM-2023-0001-154307 (July 5, 2023), available at <https://www.regulations.gov/comment/BLM-2023-0001-154307>.

²²³ 89 Fed. Reg. 40,321-40,322.

²²⁴ *Id.* at 40,322.

term commensurate with the impact it is mitigating.”²²⁵ BLM concluded that the goal of Conservation Leasing was to ensure ongoing viability of public lands for use in perpetuity.²²⁶ BLM’s justification for rescinding the Rule is not reasonable or supported by the evidence in the record in violation of the APA.

Second, although the Proposed Rescission claims that Conservation Leasing “may preclude other uses” of public lands, BLM fails to provide any evidence that such leases would prevent other authorized uses of land or limit the agency’s flexibility. BLM complains that “[t]he Rule ultimately vests too much discretion in individual authorizing officers to preclude other, productive uses, such as grazing, mining, and energy development, as incompatible with the goals of the restoration or mitigation under the lease, potentially over large tracts of public land.”²²⁷ This assertion is contradicted by evidence in the record adopting the Rule where BLM determined that “[r]estoration and mitigation leases would not disturb existing authorizations, valid existing rights, or State or Tribal land use management.”²²⁸ Not only did BLM explicitly negate the argument that Conservation Leasing would compete with other productive uses, BLM committed to ensure that “restoration and mitigation leases will not be used where existing rights and authorized uses are in place that would conflict with the conservation use.”²²⁹ The Public Lands Rule provides that the leases “will not override valid existing rights.”²³⁰ BLM responded to comments addressing concerns that existing uses may be discarded by explaining that the Rule does not “prioritize conservation above other multiple uses ... or preclude other uses where conservation use is occurring.”²³¹ Further, the existence of Conservation Leasing as a tool does not obligate BLM to employ it in any particular instance. The States submit that removing Conservation Leasing would give BLM less flexibility to manage lands—rather than more—because it clearly eliminates a management tool. Thus, BLM’s Proposed Rescission violates the APA.

Third, BLM now contends that conservation is a “non-use” of land and conservation will lead to adverse economic impacts.²³² While FLPMA does not expressly require BLM to make

²²⁵ *Id.*

²²⁶ *Id.*

²²⁷ 90 Fed. Reg. 43,991.

²²⁸ *Id.*

²²⁹ 89 Fed. Reg. 40,310.

²³⁰ *Id.* at 40,311.

²³¹ *Id.*

²³² 90 Fed. Reg. 43,991.

land management decisions in favor of the highest economic output,²³³ BLM’s assertion that conservation is not a productive use is factually incorrect.²³⁴ Claiming that the Rule’s economic impacts on landowners, states and municipalities were “materially underestimated” in the Rule, BLM now seeks comment on the economic impacts of the Proposed Rescission.²³⁵ The States assert that the Proposed Rescission would negate the economic benefits of conservation—which is both productive and economically viable. A 2015 study estimated that ecological restoration generates \$9.5 billion in economic output annually²³⁶ — more employment than coal, logging or iron and steel mills.²³⁷ Commercial conservation includes preserving biodiversity, endangered species, and forests, along with pollution reduction measures, including greenhouse gas offsets. As an example, biodiversity mitigation transacted an estimated \$3.6 billion in the year 2016 compliance markets.²³⁸ Voluntary biodiversity offsets represent another corner of the commercial conservation market that is not driven by regulatory compliance.²³⁹ Further, the carbon offset credit market is valued at \$1.9 billion in 2022.²⁴⁰ Addressing the concern that conservation is a non-use which violates FLPMA, BLM responded that Conservation Leases are intended to increase the yield of the lands benefits elsewhere or later in time.”²⁴¹

In summary, in the Proposed Rescission, BLM ignores its earlier findings and reaches contrary conclusions—that the Rule impedes BLM’s flexibility and prioritizes conservation above other BLM objectives, but BLM never provides new evidence or any analysis to support this assertion. BLM fails to address or rebut the science and evidence in the record supporting the Public Lands Rule. Because BLM’s determinations directly conflict with the statements the agency made about the Rule during its rulemaking adopting the Public Lands Rule and because BLM does not offer any new information to support its current view, its action is arbitrary and capricious.

²³³ 43 U.S.C. § 1702(c) (BLM must prioritize “harmonious and coordinated management of the various resources. . . and not necessarily to the combination of uses that will give the greatest economic return or the greatest unit output.”)

²³⁴ 43 U.S.C. § 1702(h).

²³⁵ 90 Fed. Reg. 43,992.

²³⁶ Todd BenDor et al., *Estimating the Size and Impact of the Ecological Restoration Economy*, 10 PLOS ONE 1,1 (2015), [doi:10.1371/journal.pone.0128339](https://doi.org/10.1371/journal.pone.0128339).

²³⁷ *Id.* at 9-10.

²³⁸ Genevieve Bennett & Melissa Gallant, *State of Biodiversity Mitigation 2017; Markets and Compensation for Global Infrastructure Development*, FOREST TRENDS’ ECOSYSTEM MKT., 1, 4 (Oct. 2017), https://www.forest-trends.org/wp-content/uploads/2018/01/doc_5707.pdf.

²³⁹ *Id.*

²⁴⁰ Stephen Donofrio et al., *Paying for Quality: State of the Voluntary Carbon Markets 2023*, FOREST TRENDS’ ECOSYSTEM MKT., 1, 7 (Nov. 2023), <https://www.ecosystemmarketplace.com/publications/state-of-the-voluntary-carbon-market-report-2023/>.

²⁴¹ 89 Fed. Reg. 40,310; 89 Fed. Reg. 40,322.

B. BLM fails to provide a reasoned explanation for its decision to repeal the public lands rule and its explanations are contrary to law.

In 2024, BLM examined and validated the statutory basis underlying the Public Lands Rule. In the Proposed Rescission, BLM concludes that the Rule violates statutory requirements of FLPMA.²⁴² BLM proposes to reverse its earlier legal determination but fails to provide a reasonable or rational explanation for doing so in violation of the APA.

In an about-face, BLM now concludes that “conservation” is a non-use which precludes other more productive uses of public lands and violates FLPMA’s multiple use mandate.²⁴³ BLM explains that it is statutorily mandated to regulate the “use, occupancy and development” of public lands under principles of “multiple use” and “sustained yield” and, it claims that because conservation precludes other more productive uses of public lands, Conservation Leasing violates FLPMA’s multiple use mandate.²⁴⁴ Not only is the assertion factually incorrect, as discussed in Section VII.A, above, but it is also legally flawed.

In 2024, BLM exhaustively analyzed its statutory mandate and caselaw construing that mandate, concluding that BLM possessed ample authority to issue formal leases for conservation, clarifying that conservation is an allowable and important use under FLPMA.²⁴⁵ FLPMA “authorizes the Secretary to promulgate implementing regulations necessary to “‘carry out the purposes’ of the Act” (89 Fed. Reg. 40,313, *citing* 43 U.S.C. § 1740), and, therefore, BLM determined that managing “lands for conservation use is a permissible aspect of managing public lands under the principle of multiple use and sustained yield.”²⁴⁶ In fact, as BLM noted, FLPMA authorizes and obligates BLM to protect natural resources, preserve public lands and provide habitat for fish and wildlife to fulfill its multigenerational management mandate.²⁴⁷ BLM’s management of federal lands should result in “maintenance in perpetuity” and “take into account the long-term needs of future generations” as well as the “present and future needs of the

²⁴² 90 Fed. Reg. 43,991.

²⁴³ *Id.*

²⁴⁴ 43 U.S.C. § 1732; 90 Fed. Reg. 43,991.

²⁴⁵ *New Mexico ex rel. Richardson v. U.S. Bureau of Land Mgmt.*, 565 F.3d 683, 710 (10th Cir. 2009) (“It is past doubt that the principle of multiple use does not require BLM to prioritize development over other uses...”); *Theodore Roosevelt Conservation Partnership*, 616 F.3d at 518 (“The Bureau has wide discretion to determine how those [FLPMA] principles should be applied.”); *Or. Nat. Desert Ass’n v. U.S. Bureau of Land Mgmt.*, 531 F.3d 1114, 1134 (9th Cir. 2008) (recognizing BLM’s “wide authority” to manage public lands with principles of multiple use allows it discretion to manage lands for wilderness values”).

²⁴⁶ 89 Fed. Reg. 40,313, *citing* 43 U.S.C. § 1702(c).

²⁴⁷ 43 U.S.C. §§ 1702(h); 1702(c).

American People.”²⁴⁸ BLM affirmed that its longstanding policy has “always encompassed conservation as a land use” and that the Public Lands Rule was merely establishing “more clear, consistent and informed direction. . . for conservation use to be implemented on public lands.”²⁴⁹ Far from being novel, conservation has always been “an integral component of BLM’s stewardship of public lands.”²⁵⁰ Because BLM fails to provide any evidence or authority supporting its new legal position that FLPMA prevents BLM from managing public lands for conservation, among other uses, the Proposed Rescission is arbitrary and capricious.

C. BLM fails to provide a reasoned explanation for its changes in violation of the APA.

One of the core tenets set forth in *State Farm* is that “an agency changing its course. . . is obligated to supply a reasoned analysis for the change.”²⁵¹ “Reasoned decision making. . . necessarily requires the agency to acknowledge and provide an adequate explanation for its departure from established precedent.”²⁵² In the Proposed Rescission, BLM fails to even once acknowledge its change in position—let alone provide any reasonable or rational explanation for it—in violation of the APA.

As described above, BLM fails to explain why time limits are no longer sufficient to ensure that Conservation Leases do not run in perpetuity; fails to explain how adding Conservation Leases as a tool that BLM may, but not must, utilize does not provide additional flexibility to BLM; fails to explain how Conservation Leases will interfere with existing uses or authorized uses when previously BLM guaranteed the opposite; and finally fails to explain the basis for its change in position regarding BLM’s statutory authority under FLPMA to manage for conservation as well as other uses. Each of these failures violates the APA.

D. BLM fails to consider reliance interests on the continued existence of the rule in violation of the APA.

In changing course, an agency must “assess whether there were reliance interests, determine whether they were significant, and weigh any such interests against competing policy concerns.”²⁵³ When an agency’s “prior policy has engendered serious reliance interests that must be taken into account,” it must “provide a more detailed justification [for its change in policy]

²⁴⁸ *Id.*

²⁴⁹ *Id.*

²⁵⁰ 89 Fed. Reg. 40,314.

²⁵¹ *State Farm*, 463 U.S. at 43 (finding agency acted arbitrarily and capriciously in revoking the requirement that new motor vehicles include passive restraints).

²⁵² *Dillmon v. Nat’l Transp. Safety Bd.*, 588 F.3d 1085, 1089-90 (D.C. Cir. 2009) (citing *F.C.C. v. Fox Television Stations, Inc.*, 566 U.S. 502, 515 (2009)).

²⁵³ *Dep’t of Homeland Sec. v. Regents of the Univ. of Cal.*, 140 S. Ct. 1891, 1914-15 (2020).

than what would suffice for a new policy created on a blank slate.”²⁵⁴ Although the Public Lands Rule was recently adopted, States and other stakeholders have significant reliance interests on the Rule, which BLM should have considered. Its failure to do so here is arbitrary and capricious.

To start, even though BLM is clearly changing its previous position, BLM fails to consider whether any reliance interests on the Rule exist. BLM fails to consider the reliance interests engendered by its recognition of conservation as a use and its impact on State coordination with CDFW on land use planning. *See* Section III.A.ii. In fact, States executed and began to operate programs and initiatives in reliance on the conservation, mitigation or restoration frameworks in the Rule. One such example is the Western Joshua Tree Conservation Plan, which specifically contemplates conservation of public lands that are BLM-managed as mitigation.²⁵⁵ In another, pastures of BLM-managed grazing land within the California Desert Conservation Area were relinquished to mitigate for large scale renewable energy projects (DRECP). Other examples include programmatic durability agreements from 2012 and 2015 that allow CDFW to use BLM-managed lands to provide “durable” compensatory mitigation that CDFW can rely on to fulfill state permitting requirements while BLM manages those lands under federal law.²⁵⁶ Finally, grazing permit leases have been retired (particularly with respect to California’s first and only site-specific Durability Agreement for Onyx Ranch).²⁵⁷ The Onyx Ranch State Vehicular Recreation Area is comprised of approximately 26,000 acres of checkerboarded BLM and state land and includes the Onyx Ranch mitigation. BLM has failed to consider the impact that the Proposed Rescission will have on these and similar conservation-focused agreements and co-management areas. In addition to these specific examples, the States also rely on the Rule to safeguard environments within our borders and the health of our residents, and to achieve our environmental policy goals.

In addition to States’ reliance interests, Tribes have also taken actions in reliance on the Rule. Tribes, for example, may execute legally binding agreements with federal agencies regarding management, conservation and preservation of federal lands. These “co-stewardship agreements” empower Tribes by respecting their status and rights in managing federal lands.

While the Public Lands Rule has been in place, Tribes and BLM have executed first of their kind co-stewardship agreements for the mutual benefit of the federal, Tribal, and States

²⁵⁴ *F.C.C. v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009).

²⁵⁵ The Western Joshua Tree Conservation Plan was approved on August 13, 2025 by the California Department of Fish and Wildlife. Available at: <https://wildlife.ca.gov/Conservation/Environmental-Review/WJT/Conservation-Plan> (last visited Oct. 31, 2025).

²⁵⁶ *See* Agreement by and between BLM and California Department of Fish and Wildlife dated October 2015, Section C.6(b), C.5-C.7. https://www.blm.gov/sites/default/files/docs/2022-06/2015%20Durability%20Agreement%20BLM.CAFW_10.2.15_%20508%20compliant%20final.pdf.

²⁵⁷ *See* Addendum No. 5 to Master Memorandum of Understanding for Sikes Act Implementation on the Portion of the Rudnick Common Allotment (2022), available at https://www.blm.gov/sites/blm.gov/files/docs/2022-06/Durability_Agreement_508.pdf, Section I.A., II.A.

interests. In California, at least two co-stewardship agreements with Tribes have been negotiated and finalized since the Rule took effect. The Fort Yuma Quechan Indian Tribe and its Kw'tsán Cultural Committee entered a co-stewardship agreement with BLM related to the Quechan Ancestral Landscapes.²⁵⁸ This January 2025 agreement established and memorialized processes between the Tribe and BLM on resource management and land management planning of areas located within the Tribe's traditional homelands in Imperial County, California. The lands, which previously had been exclusively managed by BLM, "contain incredible cultural, ecological, recreational, scenic, and historic values."²⁵⁹ According to the initial agreement, "Key outcomes of co-stewardship would be to provide protections for wildlife, cultural places, sacred sites, scenic features and other conservation values and would also prevent new harmful activities, including new mining claims and large industrial development within its boundaries."²⁶⁰ As the original stewards of these lands along the Colorado River, the Tribe is essential to help protect the area's natural and cultural resources.

Additionally, California's first-ever collaborative agreement between the Yocha Dehe and Kletsel Dehe Wintun Nations and BLM was signed in June 2024.²⁶¹ The agreement granted the Tribes co-management of an area called Molok Luyuk, a portion of a larger parcel of protected lands in the Northern inner Coast Range of California.²⁶² The agreement provides a unique opportunity to strengthen management of Molok Luyuk through incorporating Tribes' knowledge and expertise, gained through thousands of years of connection to the ridge.

BLM fails to consider and address the impact that rescission of the Public Lands Rule would have on these and other co-stewardship agreements, and its potential impact on future co-stewardship agreements.

States, Tribes and others have significant reliance interests in their use of resources, costs, and development of environmental planning agreements and these types of reliance interests are recognized under the APA.²⁶³ Although BLM fails to address reliance interests and offers no

²⁵⁸ Fort Yuma Quechan Indian Tribe and Kw'tsán Cultural Committee Sign a Co-Stewardship Agreement with Bureau of Land Management, (Jan. 15, 2025), available at https://quechantribe.com/documents/attachments/Fort_Yuma_Quechan_Indian_Tribe.pdf

²⁵⁹ *Id.*

²⁶⁰ *Id.*

²⁶¹ Yocha Dehe Wintun Nation, Tribal, Federal, State, and Local Leaders Unite in a Momentous Occasion, Celebrating President Joe Biden's Expansion of the Berryessa Snow Mountain To Include Molok Luyuk and the Signing of a Historic Co-Stewardship Agreement, (May 2024), available at <https://yochadehe.gov/wp-content/uploads/2024/05/Press-Release-ML-Celebration-and-Signing-FINAL.pdf>.

²⁶² *Id.*

²⁶³ *See, e.g., Texas v. United States*, 40 F.4th 205, 227-28 (5th Cir. 2022) (finding the Department of Homeland Security did not adequately consider relevant costs to the plaintiff States or their reliance interests in the pre-existing enforcement policy).

explanation for not doing so, any argument that BLM need not address reliance interests because there are none, fails in light of the examples cited above. The Agency's failure to consider these reliance interests renders the Rule arbitrary and capricious.

VIII. BLM'S ACTION IS CONTRARY TO LAW AND VIOLATES THE NATIONAL ENVIRONMENTAL POLICY ACT

BLM has failed to conduct proper environmental review of its repeal of the Public Lands Rule in violation of NEPA.²⁶⁴ NEPA requires federal agencies to prepare a "detailed statement," an Environmental Impact Statement (EIS), discussing the environmental effects of, and reasonable alternatives to, all "major Federal actions significantly affecting the quality of the human environment."²⁶⁵ If there is a substantial question whether an action may have a significant effect on the environment, BLM must prepare an EIS.²⁶⁶ As a preliminary step, BLM may prepare an Environmental Assessment to determine whether a proposed action may significantly affect the environment and whether an EIS is required.²⁶⁷ Here, BLM has not prepared either of these documents, instead improperly relying on a categorical exclusion in lieu of required NEPA procedures.

As an initial matter, BLM should have prepared an EIS because the Proposed Rescission is a "major Federal action" which has the potential to significantly affect the environment. The term "major Federal action" includes agency rules like the Proposed Rescission.²⁶⁸ Numerous courts have confirmed that a "major federal action" includes agency rules or regulations where those actions may significantly affect the environment.²⁶⁹ Courts have also held that an agency's

²⁶⁴ 42 U.S.C. § 4321 et seq.

²⁶⁵ 42 U.S.C. § 4332(2)(C).

²⁶⁶ *Ctr. for Biological Diversity v. Nat'l Highway Traffic Safety Admin.*, 538 F.3d 1172, 1185 (9th Cir. 2008).

²⁶⁷ *Id.*

²⁶⁸ 42 U.S.C. § 4336(e)(10) ([t]he term "major Federal action" means an action ... subject to substantial federal control and responsibility.).

²⁶⁹ *Scientists' Inst. for Pub. Info., Inc. v. Atomic Energy Comm'n*, 481 F. 2d 1079, 1085 (D.C. Cir. 1973)(citing to NEPA's legislative history); see, e.g., *Cal. ex rel. Lockyer v. U.S. Dep't of Agric.*, 575 F.3d 999, 1012–18 (9th Cir. 2009) (agency repeal of roadless rule and replacement with new regulations required NEPA review); *Humane Soc'y of the U.S. v. Johanns*, 520 F. Supp. 2d 8, 18–32 (D.D.C. 2007) (vacating federal rule requiring NEPA review); *Nat. Res. Def. Council v. Duvall*, 777 F. Supp. 1533, 1542 (E.D. Cal. 1991) (setting aside federal rule due to failure to perform EIS); *Am. Pub. Transit Ass'n v. Goldschmidt*, 485 F. Supp. 811, 831–36 (D.D.C. 1980), *reversed on other grounds by Am. Pub. Transit Ass'n v. Lewis*, 655 F.2d 1272 (D.C. Cir. 1981) (regulations requiring many individual actions, each significantly affecting the environment, must itself be regarded as significantly affecting the environment requiring NEPA analysis).

rescission of a rule can require an EIS where there is a possibility of significant impacts to the environment.²⁷⁰

As described above, the Proposed Rescission is likely to pose significant impacts to the environment. By weakening the framework adopted in the Public Lands Rule that prioritized ecosystem resilience on BLM-managed lands, it fundamentally alters BLM's decision-making processes and priorities. For instance, BLM's decision-making framework will no longer take conservation into account when revising or amending resource management plans. Similarly, land health and restoration priorities will play a lesser role in the agency's decision-making. In compliance with NEPA, BLM's EIS would evaluate the "reasonably foreseeable environmental effects of the proposed agency action," "any reasonably foreseeable adverse environmental effects which cannot be avoided should the proposal be implemented," and a "reasonable range of alternatives" to the proposed action.²⁷¹ Because BLM's Proposed Rescission will decrease the role of conservation, land health, and restoration in decision-making, it may result in significant, long term direct effects on BLM lands and indirect effects on non-BLM lands, and an EIS should be prepared. At the very least, the Proposed Rescission warrants more scrutiny and consideration than a categorical exclusion.

BLM's reliance on a categorical exclusion in lieu of an EIS is also misplaced. In the Proposed Rescission, BLM applies a categorical exclusion, 43 C.F.R. § 46.210(i), which covers "[p]olicies, directives, regulations, and guidelines: that are of an administrative, financial, legal, technical, or procedural nature; or whose environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis and will later be subject to the NEPA process, either collectively or case-by-case."²⁷² Relying on this categorical exclusion is improper and violates NEPA because: (a) it is unclear whether the categorical exclusion has been properly adopted by DOI; (b) BLM predetermines that the categorical exclusion applies; (c) BLM's action does not meet the express terms of the categorical exclusion; and (d) extraordinary circumstances bar its use.

First, it is unclear that this categorical exclusion can be relied upon because it was adopted by DOI using an interim final rule²⁷³ that did not afford the public notice and comment required under the APA.²⁷⁴ In adopting the categorical exclusion, DOI improperly relied on the

²⁷⁰ See *Sierra Club v. Bosworth*, 510 F.3d. 1016 (9th Cir. 2007).

²⁷¹ 42 U.S.C. § 4332.

²⁷² 43 C.F.R. § 46.210(i).

²⁷³ The Agency's interim final rule is titled "National Environmental Policy Act Implementing Regulations," 90 Fed. Reg. 29,498 (July 3, 2025), Docket ID No. DOI-2025-0004.

²⁷⁴ 5 U.S.C. §553 (b)-(d), § 551(5); 90 Fed. Reg. 29,498; 29,501-52 (July 3, 2025); see also *Perez v. Mortgage Bankers Ass'n*, 575 U.S. 92, 96 (2015) (quoting *F.C.C. v. Fox Television Stations, Inc.*, 556 U.S. 502, 515, (2009) (the APA "make[s] no distinction . . . between initial agency action and subsequent agency action undoing or revising that action"))).

“good cause” exception to evade the APA’s standard notice and comment requirement.²⁷⁵ It is unclear that DOI’s revisions to its NEPA implementing regulations complied with law and can be relied upon by BLM. It is also unclear what authority DOI used to adopt the categorical exclusion as its rulemaking cites to its authority under NEPA, which may be misplaced.²⁷⁶

Second, it is premature for BLM to determine that this categorical exclusion applies, and ensure there are no extraordinary circumstances, before a final rescission rule is even promulgated. While the nature of the proposal is to rescind the Public Lands Rule, BLM is still purporting to solicit public comment on the contours of a final rescission which may differ based on public comment. For example, BLM seeks public comment “as to whether those legacy ACEC regulations should be restored verbatim, as is proposed, or revised to allow for more efficient and flexible management . . .”²⁷⁷ That is, BLM may revise the ACEC regulations entirely in the final rule, clearly warranting more than invocation of a categorical exclusion. Therefore, it is premature for BLM to have determined the level of NEPA analysis required.

Third, BLM’s Proposed Rescission does not meet the express criteria set forth in the categorical exclusion, which restricts its use to actions that are of an “administrative, financial, legal, technical, or procedural nature” or where “environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis and will later be subject to the NEPA process, either collectively or case-by-case.”²⁷⁸ The Proposed Rescission is not administrative or procedural. Nor are the environmental effects too broad or speculative to analyze at present. A rescission, by definition, is self-executing and has immediate effects. It will eliminate a host of regulatory provisions that currently guide BLM’s decisions.²⁷⁹ While promulgation of the Public Lands Rule in the first instance may not have been self-executing, and relied on subsequent decision-making, the same cannot be said for a rescission. Upon promulgation of a final rule rescinding the Public Lands Rule, there will be an immediate effect. For example, BLM will no longer be required to “develop and implement plans and strategies, including protection, restoration, and mitigation strategies . . .”²⁸⁰ This also includes project level decisions that occur on a regular basis. This means that the effects are not too speculative to engage in a reasoned analysis of those effects.

Fourth, BLM’s use of the categorical exclusion is barred because exceptional circumstances apply. BLM’s categorical exclusion regulations require agencies to “evaluate the action for extraordinary circumstances in which a normally excluded action may have a

²⁷⁵ 5 U.S.C. §553(b)(B); *Consumer Energy Council of Am. v. Fed. Energy Regulatory Comm’n*, 673 F.2d 425, 446 (D.C. Cir. 1982).

²⁷⁶ 90 Fed. Reg. 29,498.

²⁷⁷ *Id.* at 43,991.

²⁷⁸ 43 C.F.R. § 46.210(i).

²⁷⁹ 43 C.F.R. § 6102.5(a)-(c).

²⁸⁰ *Id.*

significant effect.”²⁸¹ The Proposed Rescission involves extraordinary circumstances.²⁸² Extraordinary circumstances bar the agency’s reliance on a categorical exclusion when its proposed action may impact public health, natural resources, cultural resources, ecologically significant or critical areas, establish a precedent for future action with potentially significant impacts, are cumulatively significant, may impact properties listed on the National Register of Historic Places, or may impact listed species among other factors.²⁸³ As described in Section III.A., the Proposed Rescission poses threats in each of these categories, including especially natural resources, cultural resources, ecologically significant or critical areas, and listed species which exist on BLM lands. The Public Lands Rule’s provisions, including the Conservation Leasing, significantly benefits each of these categories, and its rescission will impact them. Accordingly, the categorical exclusion does not apply.

IX. BLM MUST COMPLY WITH SECTION 7 OF THE ENDANGERED SPECIES ACT.

Section 2(c) of the Endangered Species Act (“ESA”) provides “that all Federal departments and agencies shall seek to *conserve* endangered species and threatened species and shall utilize their authorities in furtherance of the purposes of this [Act].”²⁸⁴ The ESA defines “conservation” to mean “the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary.”²⁸⁵ While BLM’s definition of conservation is different than the definition and meaning in the ESA, they are complimentary to one another. The Public Lands Rule aids BLM’s compliance with its statutory duties under the ESA by promoting conservation and land health, which are necessary for species preservation.

Section 7 of the ESA requires the Secretary to conserve listed species. It reflects “an explicit congressional decision to require agencies to afford first priority to the declared national policy of saving endangered species,” elevating concern for species protection “over the ‘primary missions’ of federal agencies.”²⁸⁶ Under Section 7(a)(1), “the Secretary shall review other programs administrated by him and utilize such programs in furtherance of the purposes of this chapter. All other Federal agencies shall in consultation with and with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of this chapter by carrying out programs for the *conservation* of endangered species and threatened species . . .”²⁸⁷ Section

²⁸¹ *Id.* § 1501.4(b).

²⁸² *See* 43 C.F.R. § 46.215(a)-(l) (listing extraordinary circumstances).

²⁸³ *See* 43 C.F.R. 46.215.

²⁸⁴ 16 U.S.C. § 1531(c) (emphasis added).

²⁸⁵ *Id.*, § 1532(3).

²⁸⁶ *Tenn. Valley Auth. v. Hill*, 437 U.S. 153, 185 (1978).

²⁸⁷ 16 U.S.C. § 1536(a)(1) (emphasis added).

7(a)(1) thus requires the Secretary and BLM to use their authorities to conserve listed species. The Public Lands Rule aids the Secretary and BLM in fulfilling this statutory requirement, and the larger purposes of the ESA, because it incorporates “conservation” into the agency’s resource management decision-making process.²⁸⁸

The promulgation of the Public Lands Rule, while arguably discretionary under Section 7(a)(1) in the first instance, nevertheless now promotes conservation and establishes a new regulatory baseline and decision-making framework that aids BLM in fulfilling its conservation duties under Section 7(a)(1). The proposed rescission of the Public Lands Rule decreases the Secretary and BLM’s conservation efforts, which will negatively affect listed species. Thus, the proposed rescission rule would appear to run afoul of Section 7(a)(1). Arguably, had BLM never promulgated the Public Lands Rule in the first place, it may not have implicated Section 7(a)(1), but it did assume that conservation burden and now the Proposed Rescission undeniably decreases BLM’s conservation efforts thereby creating an action that runs afoul of Section 7(a)(1). BLM should explain how it intends to comply with its ESA conservation duties after rescinding the Public Lands Rule.

Section 7(a)(2) also imposes conservation duties on BLM. Each Federal agency is required to engage in consultation with the U.S. Fish and Wildlife Service (FWS) and/or the National Marine Fisheries Service (NMFS or, collectively, the Services) to “insure that any action authorized, funded, or carried out by such agency . . . is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species . . . determined . . . to be critical.”²⁸⁹ “Jeopardized the continued existence of” is defined as “means to engage in an action that reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species.”²⁹⁰ That is, there is a substantive duty to conserve listed species “to the point at which the measures [in the ESA] are no longer necessary.”²⁹¹ These measures include “scientific resources management,” just like the decision-making framework in the Public Lands Rule.²⁹² The Proposed Rescission would appear to eliminate BLM’s scientific resource management, among other effects, and thus is an action that would be expected to reduce the likelihood of recovery of listed species, resulting in jeopardy to the species. There are, of course, other ways to avoid jeopardizing listed species, but the Proposed Rescission appears to represent a significant decrease of BLM’s duty to conserve listed species from the existing regulatory baseline. Such a significant reduction likely results in jeopardy to listed species.

²⁸⁸ 89 Fed. Reg. 40,310.

²⁸⁹ 16 U.S.C. § 1536(a)(2).

²⁹⁰ 50 C.F.R. § 402.02.

²⁹¹ 16 U.S.C. § 1532(3) (definition of conservation).

²⁹² *Id.*

As a procedural matter, BLM is required to engage in the Section 7(a)(2) consultation process prior to taking any action that “may affect” listed species or critical habitat.²⁹³ Agency “action” is broadly defined in the ESA’s implementing regulations to include “(a) actions intended to conserve listed species or their habitat; (b) *the promulgation of regulations*; (c) the granting of licenses, contracts, leases, easements, rights-of-way, permits, or grants-in-aid; or (d) *actions directly or indirectly causing modifications to the land, water, or air.*”²⁹⁴ Federal agency action subject to consultation is broadly defined and includes “actions directly or indirectly causing modifications to the land, water, or air.”²⁹⁵

The Services’ joint regulations clearly require programmatic consultations on Federal, nationwide rulemakings that impact listed species.²⁹⁶

A final rule that rescinds the Public Lands Rule is an agency action, within the meaning the ESA, and it will adversely affect all listed species and critical habitat that inhabit BLM lands. For example, a rescission would eliminate the “use of the full mitigation hierarchy to address impacts to species, habitats, and ecosystems from land use authorizations.”²⁹⁷ A rescission would also negate the requirement for BLM to “identify measurable and quantifiable restoration outcomes . . .”, which will have a long-term detrimental effect on ecosystems under BLM’s management; in turn, a rescission will negatively affect listed species and critical habitat.²⁹⁸ BLM is required to consult under Section 7(a)(2) on any final rule that rescinds the Public Lands Rule.

CONCLUSION

Conservation is necessary to ensure that our natural resources—and the communities and economies that depend upon them—are sustained for future generations. FLPMA’s multiple use mandate is a balancing act, not a license to deplete. Rescinding the Public Lands Rule would have significant and nationwide impacts. Under FLPMA, BLM is authorized to lease its lands for conservation, restoration, and mitigation, which are all allowable uses within FLPMA’s “multiple use” and “sustained yield” mandate. The Proposed Rescission ignores this, and instead attempts to advance an erroneous reading of FLPMA, which, were it to be adopted, would also violate the APA, NEPA, and the ESA. It is factually and legally unsound. Adopting the Proposed Rescission would result in significant adverse impacts to the BLM lands within our States and detrimental to the communities and wildlife that depend on these lands. The Attorneys General of the

²⁹³ 50 C.F.R. § 402.14(a).

²⁹⁴ *Id.*, § 402.02 (emphasis added).

²⁹⁵ *Id.*; *Pac. Rivers Council v. Thomas*, 30 F.3d 1050, 1054-55 (9th Cir. 1994) (holding consultation is required for programmatic decisions with ongoing impacts).

²⁹⁶ 50 C.F.R. §§ 402.14; 402.02.

²⁹⁷ 43 C.F.R. § 6101.5(d)(4).

²⁹⁸ *Id.*, § 6102.3.1(a).

undersigned States therefore urge BLM to withdraw the Proposed Rescission and maintain the Public Lands Rule and the necessary and effective protections it provides.

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